163 U.S. 289

163-289

RECORD, CASE No. 15,384

THE LAW ASSOCIATION
OF
PHILADELPHIA.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No., ~~1000~~. 541 268

THE SUPREME LODGE KNIGHTS OF PYTHIAS OF THE WORLD, PLAINTIFF IN ERROR,

vs.

MRS. EUGENIE KALINSKI.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

FILED AUGUST 29, 1893.

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1 UNITED STATES OF AMERICA,
Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun and held, pursuant to law, in the court-room of said court, in the city of New Orleans, on the third Monday of November, A. D. 1892.

Present and presiding: The Honorable Don A. Pardee, United States circuit judge for the fifth judicial circuit; present, also, the Honorable A. P. McCormick, United States circuit judge for the fifth judicial circuit, and the Honorable James W. Locke, United States district judge for the southern district of Florida.

THE SUPREME LODGE KNIGHTS OF PYTHIAS OF THE WORLD, Plaintiff in Error,
v.
Mrs. EUGENIA KALINSKI, Defendant in Error.

Be it remembered that on the 24th day of March, 1893, a transcript of the record of the above-styled cause, in the United States circuit court for the eastern district of Louisiana, was filed in the United States circuit court of appeals for the fifth circuit, in the words and figures following, to wit:

2 Circuit Court of the United States, Eastern District of Louisiana.

Mrs. EUGENIE KALINSKI
vs.
THE SUPREME LODGE KNIGHTS OF PYTHIAS OF THE WORLD. No. 12092.

Transcript of Removal from the Civil District Court for the Parish of Orleans, La.

Filed April 25, 1892.

Proceedings in the Civil District Court, Parish of Orleans.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Civil District Court of the Parish of Orleans.

Civil District Court, Division "C."

Mrs. EUGENIE KALINSKI
vs.
THE SUPREME LODGE KNIGHTS OF PYTHIAS OF THE WORLD. No. 35383.

Petition.

Filed March 23rd, 1892.

To the honorable the judges of the civil district court for the parish of Orleans, State of Louisiana:

The petition of Eugenie Kalinski, widow of Achille Kalinski, deceased, and a resident of said parish, with respect represents:

That the Supreme Lodge Knights of Pythias of the World, (a foreign corporation incorporated under the act of Congress approved May 5th, 1890, and domiciled in Washington, D. C., but doing business in the State of Louisiana and parish of Orleans, without compliance with the provisions of act 149, 1890, and so acting and transacting business through various agents known as secretaries and other styled officials of various endowment sections) is justly and truly indebted to her in the sum of $3,000.00 with legal interest from May 26th, 1891, for this, to wit:

That during his lifetime her deceased husband Achille Kalinski became a member of the endowment rank of the order of Knights of Pythias, (in section No. 363 thereof and whereof Wm. Geneste, Esq., is now secretary), paid the admission fee, etc., and in consideration thereof, the said Supreme Lodge Knights of Pythias of the World issued to him a certificate of membership No 18061, hereto annexed and made part hereof, wherein and whereby said supreme lodge contracted and bound itself to pay to your petitioner on the death of her said husband said sum of $3,000.00, the said certificate being in effect a life-insurance policy.

Petitioner represents that the said Achille Kalinski during his life fully complied with all the obligations incurred by him as such member and under such certificate or policy, and that at his death the same was in full force and virtue.

That said Achille Kalinski died on the 26th day of May, 1891, that due notice was given and proof made as stipulated on said certificate and amicable demand made for the payment of the said sum due under the terms of said certificate to your petitioner, but that said supreme lodge has failed and neglected to pay the same.

The premises considered, your petitioners prays that the said Supreme Lodge Knights of Pythias of the World, in accordance with act 149, 1890, may be cited to answer hereto, and after due legal proceedings, be condemned to pay unto your petitioner said sum of three thousand dollars, with legal interest from May
3 26th, 1891, and costs, and all such general and equitable relief as may be necessary in the premises.

(Signed) MORRIS MARKS,
(Signed) WM. ARMSTRONG,
Attorneys.

Citation. Issued March 24th, 1892.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

MRS. EUGENIE KALINSKI
vs.
THE SUPREME LODGE KNIGHTS OF PYTHIAS OF THE WORLD. } No. 35383.

To the Supreme Lodge Knights of Pythias of the World, through Wm. Geneste, secretary, endowment section No. 363, of the endowment rank of the Knights of Pythias, New Orleans:

Your are hereby summoned to comply with the demand contained in the petition of which copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the civil district court for the parish of Orleans, within ten days after the service thereof.

Witness the Honorables T. C. W. Ellis, F. D. King, F. A. Monroe, N. H. Rightor, A. Voorhies, judges of the said court, this 24th of March, in the year of our Lord 1892.

(Signed) M. GUIRAUD,
Deputy Clerk.

Sheriff's Return.

Filed March 29th, 1892.

Received Thursday, March 24th, 1892, and on the 24th day of March, 1892, I served a copy of the within citation and accompanying petition on the Supreme Lodge Knights of Pythias of the World by personal service on Wm. Geneste, secretary endowment section No. 263 of the endowment rank of the Knights of Pythias, New Orleans.

Returned same day.

(Signed) J. F. TIMS,
Deputy Sheriff.

Petition for Removal.

Filed April 6th, 1892.

Civil District Court, Division "C."

MRS. EUGENIE KALINSKI
vs.
SUPREME LODGE KNIGHTS OF PYTHIAS OF THE WORLD. } No. 35383.

To the honorable the civil district court for the parish of Orleans:

The petition of the Supreme Lodge of Knights of Pythias of the World, defendant in the above entitled and numbered cause, respectfully represents:

That your petitioner, The Supreme Lodge Knights of Pythias of the World, was, at the time of the filing — this suit, and now is, a corporation other than a banking corporation, created by and organized under and by virtue of an act of Congress, approved May 5th, 1870, with its domicile in the city of Washington, in the District of Columbia.

That your petitioner has been served with process and cited to appear before this honorable court in this cause, and this petition for removal is made and filed before petitioner, defendant in said cause, has appeared, answered or pleaded to the petition, declaration or complaint of the plaintiff; and the matter in dispute in this suit exceeds, exclusive of interest and costs, the sum of two thousand dollars.

Petitioner further shows that this suit arises under the laws of the United States, and that the controversy between the
4 plaintiff and defendant herein arises under and is to be determined by the laws of the United States and especially under the act of Congress above referred to; that this suit is based upon a beneficial or life certificate issued under the authority conferred by said act of Congress, and the said certificate and the defense to the said suit arise under the laws of the United States; that the plaintiff herein — domiciled in this State, and the defendant is domiciled in the city of Washington as above alleged.

That your petitioner, the said Supreme Lodge K. of P. of the World, is desirous of removing this suit to the circuit court of the United States for the fifth circuit and eastern district of Louisiana, holding sessions in New Orleans; that petitioner offers and files herewith bond with good and solvent surety, according to law, for its entering in the said circuit court of the United States, on the first day of its next session, a copy of the record in this suit, and for the paying of all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto, and for appearance and entering special bail therein, if the same be required, and otherwise conditioned according to law.

Wherefore, petitioner, defendant in this cause, prays this honorable court to proceed no further herein, except to make the order of removal required by law, and to accept this petition and the said bond and surety and to cause the record herein to be removed to the said circuit court of the United States, in and for the fifth circuit and eastern district, at New Orleans. And petitioner further prays for all necessary orders and for general relief.

(Signed) J. ZACH. SPEARING, *Attorney.*

Affidavit.

STATE OF LOUISIANA, }
Parish of Orleans. }

William Geneste, being duly sworn, deposes and says: He is the secretary of section No. 363 of the endowment *b*ank of the Supreme

Lodge Knights of Pythias of the World, on whom process has been served, and is duly authorized to receive process and make affidavits and give bonds in this suit against the supreme lodge, and that the foregoing petition and the allegations thereof are true and correct.

(Signed) W. GENESTE.

Sworn to and subscribed before me this 6th day of April, 1892, at the city of New Orleans, La.

(Signed) J. ZACH. SPEARING,
Notary Public.

Order.

Let the foregoing petition and annexed bond and surety be accepted, and let this cause be removed to the circuit court of the United States for the fifth circuit and eastern district of Louisiana, holding its sessions in New Orleans, as prayed for and according to law.

New Orleans, La., April 6th, 1892.

(Signed) F. A. MONROE, *Judge.*

Bond.

Filed April 6th, 1892.

Know all men by these presents that we, The Supreme Lodge Knights of Pythias of the World, as principal, and Wm. Graner as surety, are held and firmly bound to Mrs. Eugenie Kalinski in the full sum of five hundred dollars, the payment whereof well
5 and truly to be made, unto the said Mrs. Eugenie Kalinski her executors, administrators and assigns we bind ourselves, our heirs and representatives, successors and assigns jointly and severally and firmly by these presents.

The condition of this bond is such, that said principal, said Supreme Lodge Knights of Pythias of the World, having petitioned the civil district court for the parish of Orleans, State of Louisiana, for the removal of a certain cause therein pending and numbered 35383 on the docket of the said court, wherein said Mrs. Eugenie Kalinski is plaintiff and the said Supreme Lodge Knights of Pythias is defendant, to the circuit court of the United States for the fifth circuit and eastern district of Louisiana, holding sessions in New Orleans:

Now, if the said Supreme Lodge Knights of Pythias, petitioner, shall enter in the said circuit court of the United States, on the first day of the next session, in the manner provided by law, a copy of the record in said suit and shall well and truly pay all costs that may be awarded by said circuit court of the United States, if said court should hold that said suit was wrongfully or improperly removed thereto, and shall then and there appear and enter special bail in said suit if such bail is required by law, then this obligation to be void, otherwise in full force and effect.

Witness our hands and seals this 5th day of April, 1892, at New Orleans, La.

(Signed) WM. GRANER.
(Signed) W. GENESTE, *Secretary.*

Affidavit.

Before me, the undersigned authority, personally came and appeared Mr. Wm. Graner, of the city of New Orleans, who being duly sworn, deposes and says: that he is surety on the bond and that he is worth more than the sum of five hundred dollars, over and above all liabilities and debts, and property exempt from seizure.

(Signed) WM. GRANER.

Sworn to and subscribed before me this 5th day of April, 1892.

(Signed) J. ZACH. SPEARING,
Notary Public.

Certificate of Membership No. —, Issued by the Endowment Rank of the Order of Knights of Pythias, Annexed and Made Part of this Petition.

Filed March 23rd, 1892.

No. 18061.	(Certificate of Membership)	F. C. B.
$3,000.	Fourth Class.	F. C. B.

Endowment Rank of the Order of Knights of Pythias.

This certifies that Brother Achille Kalinski received the endowment rank of the order of Knights of Pythias in section No. 363 on June 11, 1887, and is a member in good standing in said rank. And in consideration of the representations and declarations made in his application, bearing date of May 23, 1887, which applications is made a part of this contract, and the payment of the prescribed admission fee, and in consideration of the payment hereafter to said endowment rank of all assessments as required, and the full compliance with all the laws governing this rank now in force, or that may hereafter be enacted, and shall be in good standing under said laws, the sum of three thousand dollars will be paid by the Supreme Lodge Knights of Pythias of the World to Eugenie Kalinski, wife, as directed by said brother in his application, or to such other person or persons as he may subsequent- direct by change of beneficiary entered upon the records of the supreme secretary of the end-wment rank, upon due notice and proof of death, and good standing in the rank at the time of death,
6 and surrender of this certificate.

Provided, however, that if, at the time of the death of said brother, one monthly payment of the endowment fund by members holding an equal amount of endowment, shall not be sufficient to pay the amount of endowment held by said brother, the benefit to be paid in case of death shall be a sum equal to one payment to the

endowment fund by each member holding an equal amount of endowment.

And it is understood and agreed that any violation of the within-mentioned conditions, or the requirements of the laws in force governing this rank, shall render this certificate and claims null and void, and that the said supreme lodge shall not be liable for the above sum, or any part thereof.

In witness whereof, we have hereunto subscribed our names and affixed the seal of the Supreme Lodge Knights of Pythias of the World.

Attest: W. B. KENNEDY,
Supreme Chancellor.
HOWARD DOUGLASS,
[SEAL.] N. E. CARREAU,
Supreme Keeper of Records and Seal.

Issued this 30 day of July, 1887. P. P. XXIX at St. Louis, Mo., and registered in Book 2, folio 62.

(Signed) W. B. KENNEDY,
Supreme Secretary.

I hereby accept this certificate of membership subject to all the conditions therein contained.

(Signature of member) A. KALINSKI.

Dated at New Orleans this 10th day of May, 1888.

Attest: W. GENESTE,
Secretary Section No. 363 E. R.

Certificate.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I, Edgar A. Luminais, clerk of the civil district court for the parish of Orleans, do hereby certify that the foregoing ten pages do contain a true, correct and complete transcript of all the proceedings had, documents filed, testimony and evidence adduced upon the trial of the cause wherein Mrs. Eugenie Kalinski is plaintiff, and the Supreme Lodge Knights of Pythias of the World is defendant, instituted in this court and now in the records thereof under the No. 35383.

In testimony whereof, I have hereunto set my hand and affixed the impress of the seal of said court, at the city of New Orleans, on this twenty-fifth day of April, 1892, in the year of our Lord one thousand eight hundred and nine-two, and in the one hundred and sixteenth year of the Independence of the United States of America.

[SEAL.] (Signed) JAS. D. RANKIN,
Deputy Clerk.

PROCEEDINGS IN THE U. S. CIRCUIT COURT.

Motion to Remand Cause.

Filed April 26, 1892.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

Removed, No. 35383, Civil District Court, Parish of Orleans, Division C.

Mrs. EUGENIE KALINSKI
vs.
THE SUPREME LODGE KNIGHTS OF PYTHIAS OF THE WORLD. } No. 12092.

Now into this honorable court comes plaintiff, Mrs. Eugenie Kalinski, through the undersigned, her counsel, and moves to remand this cause back to the State court, as this court is without jurisdiction.

(Signed) M. MARKS,
WM. ARMSTRONG,
Of Counsel.

Marshal's Return.

Received by United States marshal, New Orleans, La., April 27, 1892, and on same day I served copy hereof on the within-named J. Zach. Spearing by handing same to him in person in New Orleans, La.

(Signed) J. B. DONNALLY,
U. S. Marshal,
By JAMES R. PINNIGRE,
Dy U. S. Marshal.

Motion to Remand Denied.

Extracts from the Minute Book, April Term, 1892.

NEW ORLEANS, SATURDAY, *April* 30, 1892.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

Mrs. EUGENIE KALINSKI
vs.
THE SUPREME LODGE KNIGHTS OF PYTHIAS OF THE WORLD. } No. 12092.

This cause came on this day to be heard on the motion herein filed by plaintiff to remand this cause to the civil district court—

Present: Morris Marks and Wm. Armstrong, attorneys for plaintiff;

Present: C. S. Rice, J. Zach. Spearing, for the defendant—and was

argued by counsel. On consideration whereof it is ordered that the motion to remand be denied; it is further ordered that the defendant have five days in which to answer.

Answer.

Filed May 7, 1892.

United States Circuit Court for the Eastern District of Louisiana.

MRS. EUGENIE KALINSKI
vs.
THE SUPREME LODGE KNIGHTS OF PYTHIAS OF THE WORLD. } No. 35383.

And now comes the defendant, and for answer to the petition of plaintiff, denies the allegations in said petition contained, except so far as hereinafter specially admitted.

Defendant specially admits that during his lifetime Achille Kalinski, mentioned in said petition, became a member of the endowment rank of the order of Knights of Pythias, in section No. 363 thereof, paid the initiation fee, and that there was issued to him the certificate mentioned in said petition.

Further answering, defendant specially denies that said Achille Kalinski did, during his lifetime, comply with the obligations imposed upon him as such member and under said certificate, and that, at his death, the same was in full force and virtue,—and avers that, under the terms of the application for his membership to said endowment rank and in the said certificate, and the constitution and by-laws of said endowment rank Knights of Pythias of the world, all being and forming parts of the contract between said Kalinski, or the beneficiaries under said certificate, and this defendant, it was, among other things, provided that any failure or neglect on the part of said Kalinski to pay assessments or dues as provided by the laws of the rank or order, should work a
8 forfeiture of all his rights and the rights of his heirs and beneficiaries, in the premises, to all benefits and privileges accruing to members of said rank.

And respondent alleges that, by said laws, it is, among other things, specially provided that when a member of the endowment rank becomes in arrears to his lodge—meaning the lodge of the Knights of Pythias of which he is a member—for an amount equal to one year's dues, he shall forfeit his membership in the section and said rank—meaning the section and rank mentioned in said plaintiff's petition—and render void his endowment certificate—meaning the certificate mentioned in said petition.

And respondent further avers that at the time of his death, say May 26th, 1891, said Achille Kalinski was in arrears for, owed and was indebted, to Syracuse Lodge No. 50 of said order, Knights of Pythias, of which he was a member, or to which he belonged, in an amount in excess of one year's dues, and that he had, at the time of his death, forfeited his membership in the said section and rank

and the said certificate was and is null and void and of no force or effect.

And your respondent further avers that, after being so in arrears and the forfeiture of all rights as aforesaid, of which forfeiture, however, your respondent was then, without its fault or negligence, unaware, the said Kalinski paid certain assessments under said certificate; that, as soon as made aware of the forfeiture hereinbefore mentioned, respondent made legal tender to the plaintiff herein of the amount of such assessments so paid, and that she refused the same.

That respondent is — nowise indebted to the plaintiff.

Wherefore, respondent prays that plaintiff's suit be dismissed, with costs, and that he have all general relief.

(Signed) RICE & ARMSTRONG,
J. ZACK. SPEARING,
Of Counsel.

Empanneling of Jury and Continuance.

Extract from the Minute Book, April Term, 1892.

NEW ORLEANS, SATURDAY, *May* 28, 1892.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

MRS. EUGENIE KALINSKI
vs.
KNIGHTS OF PYTHIAS OF THE WORLD. } No. 12092.

This cause was called for trial.

Present: Morris Marks and Wm. Armstrong, attorneys for the plaintiff.

Present: Rice & Armstrong, J. Zach. Spearing, for the defendant; whereupon the following-named jurors were called and sworn to well and truly try the issue joined herein, to wit:

1. Mike Purcell.
2. M. Camps.
3. G. W. Stockton.
4. Wm. Lewis.
5. Henry Relf.
6. Jos. V. Bofill.
7. Albert Richards.
8. A. L. Lange.
9. Thomas Barr.
10. Jno. J. Flynn.
11. Geo. E. Apps.
12. Henry Luft.

When the court appointed Mike Purcell, foreman of the said jury, and the case was continued to Wednesday, June 1, 1892, at 11 a. m.

Order: Continuance.

Extract from the Minutes.

WEDNESDAY, *June* 1, 1892.

MRS. EUGENIE KALINSKI
vs.
SUPREME LODGE KNIGHTS OF PYTHIAS OF THE WORLD. } No. 12092.

9 This cause being before his honor the district judge it is ordered that the same be continued to Friday, June 3, 1892, on motion of counsel for the parties, and the jury in said case are discharged to said date.

Order: Continuance.

Extract from the Minutes.

FRIDAY, *June* 3, 1892.

MRS. E. KALINSKI
vs.
KNIGHTS OF PYTHIAS. } No. 12092.

This cause fixed for trial this day was continued until to-morrow at 11 a. m., counsel for all parties being present and taking notice.

Hearing and Continuance.

Extract from the Minutes.

SATURDAY, *June* 4, 1892.

MRS. EUGENIE KALINSKI
vs.
KNIGHTS OF PYTHIAS OF THE WORLD. } No. 12092.

This cause, as continued from a former date, was this day resumed and the jurors empaneled in the cause as well as the attorneys for the respective parties being all present, the trial was proceeded with. After hearing the pleadings and the evidence the court on motion of counsel ordered the cause to go over until Tuesday, June 7, 1892, at 11 a. m., and the jurors were discharged to said date and hour.

Supplemental Answer and Tender.

Filed June 4, 1892.

U. S. Circuit Court for the Eastern District of Louisiana.

MRS. EUGENIE KALINSKI
vs.
THE SUPREME LODGE KNIGHTS OF PYTHIAS OF THE WORLD. } No. 12092.

And now comes the defendant, The Supreme Lodge Knights of

Pythias of the World, and reiterating the averment that the certain assessments, paid by Achille Kalinski, deceased, after he had become in arrears to his lodge for an amount equal to one year's dues, and the forfeiture of his membership in the section and endowment rank of said order, and after his endowment certificate had thus been rendered void, were received by the defendant while ignorant and without fault unaware that said Kalinski was so in arrears, and his said membership forfeited and his certificate rendered void, and deposits into court and tenders to plaintiff the amount of the said assessments so paid, to wit: the sum of sixteen $\frac{20}{100}$ dollars ($16.20) together with five per cent. per annum interest thereon, from April 1st, 1891, to date, in all the sum of seventeen $\frac{25}{100}$ dollars ($17.25), lawful money of the United States of America, and without prejudice to the within tender made to said plaintiff on say the 17th of August, 1891, tenders the same to the plaintiff in full of all demand.

And prays that this supplemental answer and tender may be filed, and judgment rendered as in original answer prayed for, with costs. And respondent prays for all general relief.

(Signed) RICE & ARMSTRONG,
J. Z. SPEARING, *Of Counsel.*

10 *Order.*

Let the within supplemental answer and tender be filed.
New Orleans, La., June 4, 1892.

(Signed) EDWARD C. BILLINGS, *Judge.*

Hearing and Continuance.

Extract from the Minute Book.

TUESDAY, *June* 7, 1892.

MRS. EUGENIE KALINSKI
vs.
KNIGHTS OF PYTHIAS OF THE WORLD. } No. 12092.

This cause as continued from last Saturday came on this day to be further heard, and the jurors empanneled in the cause as well as the attorneys for the parties respectively being all present the trial was proceeded with.

After hearing argument in part from counsel it was ordered that the cause be continued until to-morrow at 11 a. m.

Hearing and Verdict.

Extract from the Minute Book.

WEDNESDAY, *June* 8, 1892.

MRS. EUGENIE KALINSKI
vs.
KNIGHTS OF PYTHIAS OF THE WORLD. } No. 12092.

This cause as continued from yesterday came on this day to be

further heard, and the jurors empanneled in the cause as well as the attorneys for the parties respectively being all present, the trial was proceeded with. After hearing closing argument from counsel and receiving a charge from the court the said jury retired to deliberate as to their verdict. After due deliberation the jury returned into court and then and there in open court, through their foreman, M. J. Purcell, did render and deliver their verdict as follows:

NEW ORLEANS, LA., *June* 8, 1892.

We, the jury, find a verdict for the plaintiff in the sum of three thousand dollars with interest from judicial demand as prayed for. $3,000.

M. J. PURCELL, *Foreman.*

Whereupon it was ordered that the said verdict be recorded and it is done accordingly.

Rule for New Trial.

Entered and Filed June 11, 1892.

MRS. EUGENIE KALINSKI
vs.
THE SUPREME LODGE KNIGHTS OF PYTHIAS OF THE WORLD. } No. 12092.

On motion of Rice & Armstrong and J. Zach. Spearing, of counsel for the defendant in above entitled and numbered suit, it is ordered by the court that plaintiff show cause on Saturday, June 18, 1892, why a new trial herein should not be granted for the following reasons, to wit:

1st. The verdict and the judgment herein rendered are contrary to the law and the evidence,—it having been established, upon the trial, by competent and sufficient evidence, that at the time of his death, Achille Kalinski, the insured was in arrears to Syracuse lodge No. 50, Knights of Pythias, of which he was a member, in an amount equal and in excess of one year's dues, and it having been, also, established that the fact of being in arrears equal to one year's dues operated a forfeiture of the certificate sued on.

2nd. That the court erred, to the prejudice of the defendant, in refusing to charge the jury, that, in case they believe the testimony, offered by the defendant, to prove that, at the time of his
11 death, Achille Kalinski, was in arrears to his lodge, meaning said Syracuse lodge, in an amount equal to one year's dues, to be true, and that the admissions and declarations, as stated by the witnesses, are true, they should give the same effect to such testimony, as if the admission or declaration was made by a person now living.

Marshal's Return.

Received by U. S. marshal, New Orleans, La., June 13, '92, and on the same day I served a true copy of the within motion on Morris Marks, att'y of record, by handing the same to him in person and leaving the same in his hands.

(Signed) J. B. DONNALLY,
U. S. Marshal,
By J. E. BOEHLER,
Dy U. S. Marshal.

New Trial Submitted.

Extract from the Minutes.

SATURDAY, *June* 18, 1892.

Mrs. E. KALINSKI
vs.
KNIGHTS OF PYTHIAS OF THE WORLD. } No. 12092.

The rule for a new trial herein filed by the defendant came on this day to be heard—

Present: Morris Marks, of counsel for plaintiff;

Present: Rice & Armstrong, for defendant;

And was argued and submitted—when the court took time to advise.

New Trial Submitted.

SATURDAY, *June* 18, 1892.

Mrs. E. KALINSKI
vs.
KNIGHTS OF PYTHIAS OF THE WORLD.

The rule for new trial herein filed by defendant came on this day to be heard.

Morris Marks, of counsel for plaintiff.

Rice & Armstrong, for defendant.

Extract from the minutes.

New Trial Granted.

Extract from the Minutes.

SATURDAY, *June* 25, 1892.

Mrs. E. KALINSKI
vs.
KNIGHTS OF PYTHIAS OF THE WORLD. } No. 12092.

This cause having been heretofore argued and submitted upon a rule for a new trial filed by the defendant, and the court having considered the same, it is now ordered that a new trial be granted herein, and that the verdict herein rendered be and the same is hereby set aside.

Jury Empaneled, Hearing and Continuance.

Extract from the Minutes, November Term, 1892.

NEW ORLEANS, THURSDAY, *February* 9, 1893.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

Mrs. E. KALINSKI
vs.
KNIGHTS OF PYTHIAS. } No. 12092.

This cause was called for trial—
Morris Marks and Wm. Armstrong appearing for plaintiff;
Wm. Grant and J. Z. Spearing for the defendant—whereupon the following-named jurors were called and sworn to well and truly try the issue joined herein, to wit:

12

1. W. W. Crane,
2. John Holmes,
3. F. A. Behan,
4. Hy. Thezan,
5. S. Gay,
6. R. G. Hurlbut.
7. Wm. Moake,
8. F. Roth,
9. Thos. S. Burbank,
10. F. Jailliot,
11. Pat. Hurley,
12. Wm. J. Steele,

when the court appointed W. W. Crane foreman of the jury, and the trial was proceeded with. After hearing pleadings and evidence in part, the court ordered the cause to go over until to-morrow at 11 a. m.

Hearing and Continuance.

Extract from the Minutes.

FRIDAY, *February* 10, 1893.

Mrs. E. KALINSKI
vs.
KNIGHTS OF PYTHIAS. } No. 12092.

This cause as continued from yesterday was this day resumed and the counsel for the respective parties as well as the jurors empanneled in the cause being all present, the trial was proceeded with. After hearing further evidence and argument from counsel, the cause was ordered to go over until to-morrow at 11 a. m.

Verdict.

Extract from the Minutes.

NEW ORLEANS, SATURDAY, *February* 11, 1893.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

Mrs. E. KALINSKI
vs.
KNIGHTS OF PYTHIAS. } No. 12092.

This cause as continued from yesterday was this day resumed and the counsel for the parties respectively as well as the jurors empanneled in the cause being all present, the trial was proceeded with.

After hearing the charge of the court, the said jury retired to deliberate as to their verdict. After due deliberation the jury returned into court, and then and there in open court, through their foreman, did render and deliver the following verdict, viz:

NEW ORLEANS, LA., *February* 11*th*, 1893.

We the jury in within case find a verdict for the plaintiff and against the defendant in the sum of three thousand dollars ($3,000.00) with interest from judicial demand, as prayed for.

WM. W. CRANE, *Foreman.*

Whereupon it was ordered that the said verdict be recorded and it is done accordingly.

Judgment.

Extract from the Judgment Book No. 15, fo. 213.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana, November Term, 1892.

NEW ORLEANS, SATURDAY, *February* 11, 1893.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

MRS. EUGENIE KALINSKI
vs.
THE SUPREME LODGE KNIGHTS OF PYTHIAS OF THE WORLD. } No. 12092.

By reason of the verdict of the jury herein and in accordance therewith, it is ordered, adjudged and decreed that the plaintiff, Eugenie Kalinski, widow of Achille Kalinski, deceased, do have and recover of and from the defendant, The Supreme Lodge
13 Knights of Pythias of the World, the sum of three thousand dollars ($3,000.00) with legal interest from judicial demand, March 23, 1892, and all costs of suit.

Judgment rendered February 11, 1893.
Judgment signed February 17, 1893.
(Signed) EDWARD C. BILLINGS, *Judge.*

Assignment of Errors.

Filed Feb'y 23, 1893.

U. S. Circuit Court, Eastern District of La.

Mrs. Eugenie Kalinski
vs.
Supreme Lodge Knights of Pythias of the World. } No. 12092.

Assignment of errors filed by defendant.

1. The court having given the charge asked for by defendant, and instructed the jury that the proof established the fact that Achille Kalinski was indebted to his lodge for an amount of $12.50 at the date of his death which was equal to and in excess of one year's dues to his lodge, should have further charged the jury as requested by the defendant, that, being so in arrears, he had forfeited his rights in the section of the endowment rank to which he belonged, notwithstanding that the lodge had failed to suspend him, and notwithstanding that the officers of said section had received the assessments made against him up to the date of his death, in ignorance of the fact that he was in arrears as aforesaid.

2. It was error under the undisputed facts to refuse the charge asked, and to instruct the jury in lieu thereof, as in the defendant's bill of exceptions set forth.

3. The court erred in adopting the decision of the board of control in the case of John A. Mainkheim, as the law of this case.

(Signed) ROUSE & GRANT,
J. ZACH. SPEARING,
Att'ys for Defendant.

Bill of Exceptions.

Filed February 24, 1893.

United States Circuit Court, Eastern District of Louisiana.

Mrs. Eugen-e Kalinski
vs.
The Supreme Lodge of the Knights of Pythias of the World. } No. 12092.

Bill of exceptions.

Be it remembered that at the trial of this cause before the jury on the 11th day of February, 1893, the defendant in support of its answer and plea, offered in evidence: 1st, the application of Achille Kalinski for membership in section 363 of the endowment rank of the order of the Knights of Pythias, hereto annexed and marked Exhibit "A" as part of this bill; 2nd, the constitution of the endowment rank of Knights of Pythias of the world, including the revised general laws and regulations adopted by the board of control, Octo-

ber 24, 1890, marked Exhibit "B" 1 and Exhibit B 2, made part of this bill; 3d, also the constitution and by-laws of Syracuse lodge No. 50, Knights of Pythias, located at New Orleans, La., marked Exhibit C and made part hereof; that all of said documents were received in evidence without objection, and were accepted by the court as determinative of the rights of the parties in the cause of action herein.

And it further appearing to the court from the books of account
14 kept by the said Syracuse lodge No. 50 and other evidence, that the said Achille Kalinski was indebted to said lodge, of which he was a member, on the 31st day of March, 1891, and at the date of his death, May 24th, 1891, in the sum of $12.50 for dues, owing by him to his said lodge, under by-law art. 4, page 46 and art. 13, page 54 of said lodge, which sum was in excess of one year's dues, he was required to pay, as dues; but that he had not been suspended by his lodge for that reason before his death under the provisions of sec. 5 of art. 16, of the constitution of the lodge, and sec. 3 of article 14 of the by-laws, although he had received notice from the proper officer of the lodge to pay the same and had been told to pay the same before the next lodge meeting, but that he died before such next meeting without having paid the same. And it further appearing as a fact, not disputed, that the keeper of records and seals of Syracuse lodge No. 50, had under sec. 6, article 4, of the constitution of the lodge, failed to notify the section of the endowment rank, to which said Kalinski belonged, that he was in arrears; and that the said Syracuse lodge failed to suspend him on account of arrears, and that the assessments due by Kalinski to the endowment rank were received in ignorance of the fact that he was so in arrears and had been tendered back after his death and after several months, subsequent to the application of his widow for payment of policy. And plaintiff having offered the certificate of membership issued to Kalinski upon acceptance of his application marked Exhibit E, which was accepted without objection, both parties rested upon the evidence; and counsel for defendant thereupon requested the court to charge the jury as follows: The jury is instructed that the books of account kept by the Syracuse lodge, of which the deceased Achille Kalinski was a member, are competent to be considered by them as evidence with reference to his indebtedness at the date of his death, for lodge dues, and that if the jury find from these books of account that he was in arrears, in the absence of proof which opposes or of proof showing payment of these dues, or error in the account, the entries in said accounts are conclusive proof of the amount shown thereby to be due. Which charge the court gave as requested, adding thereto the following: "I charge the jury as requested by the defendant's counsel as to the proof of the arrearages due by Mr. Kalinski at the time of his death. The books of defendant are competent proof and they are uncontradicted and, therefore, establish the arrearages as being $12.50.

And defendant further requested the court to charge the jury as follows: "If you find that Kalinski was in arrears and indebted to his lodge for dues at the date of his death in an amount equal to

one year's dues, you must find as a conclusion from the fact that he had forfeited his membership in the endowment rank, and that the plaintiff is not entitled to recover in this suit.

And the receipt of assessments by the officers of said endowment rank (which it is admitted have been tendered back as hereinabove set forth), previous thereto, if in ignorance of the fact that he was so in arrears, was not a waiver of such forfeiture. But the court refused to give the charge as requested, but in lieu thereof charged the jury as follows: "As to the construction of the meaning as matter of law, of the fundamental law and of the orders of defendant's organizations, I adopt the views of the board of control of the defendant's order, in case of John A. Manikheim; and I instruct the jury, if the jury finds as a fact that the keeper of records and seal of the order to which Mr. Kalinski belonged failed to notify the section of which he was member of the fact that he was in arrears for dues to said lodge, and also that the lodge failed to suspend Mr. Kalinski in accordance with law; and also the section of the endow-
15 ment rank had received the monthly assessments of said Kalinski up to the date of his death, then the verdict will be for the plaintiff and against the defendant for the sum of three thousand dollars with interest from judicial demand."

The views of the board of control referred to in said charge, as well as the instructions of the supreme chancellor to the various grand chancellors and officers and members of the various sections of the endowment rank, is hereto annexed and marked Exhibit D, and made part of this bill.

To which refusal of the court to give the instructions secondly requested, and giving of the foregoing instructions in lieu thereof the defendant at the time, then and there excepted as error on the part of the court under admitted facts of the case, and now here tenders this bill of exceptions and prays the court to sign and seal the same, which is done accordingly.

February 24, 1893.

[SEAL.] (Signed) EDWARD C. BILLINGS, *Judge.*

16 EXHIBIT "A" TO BILL OF EXCEPTIONS.

Filed June 4, 1892; Feb'y 24, 1893.

Application and Medical Examiner's Certificate, No. 18061, *of Achille Kalinski.*

Age, 45. Monthly assessment, $4.05.

To section No. 363, New Orleans, La., endowment rank, K. of P.

Certificate issued July 30, 1887.

Amount of endowment, $3,000.

Approved June 6, 1887.

L. A. QUEMES, M. D.,
Medical Examiner-in-Chief.

(Paid.)

Instructions.

All blanks on this part of the application are to be filled by the supreme secretary and medical examiner-in-chief. Secretaries of sections will see that all other blanks are properly filled, and all questions are answered, before forwarding the application.

Application for Membership in the Endowment Rank, Knights of Pythias, Fourth Class.

17 Applicants must read instructions in the margin and conform to them strictly.

The undersigned is desirous of becoming a member of section No. 363, of the endowment rank of the order of Knights of Pythias. This application will become part of the contract, if accepted. The following answers are to be in the handwriting of the applicant and expressed in his own language:

I. (5) Describe the occupation fully.

I. (1) Name at full length: Achille Kalinski. (2) Post-office address: 162 Julia. (3) No. of residence and name of street: 201 Camp St. (4) State of Louisiana. (5) Occupation: Supt fire patrol. (6) Other or occasional occupation: None. (7) Are you married or single? Married. (8) Place of birth: Brussels, Belgium. (9) Date of birth: Nov. 9th. (10) Year: 1842. (11) Month: Nov. (12) Day of month: 9th. (13) Age, reckoned from nearest birth-day: Forty-four (44).

II. (1) If in the E. R., give the number of certificate and class; and in any event, give full particulars.

II. (1) Is there now any insurance or endowment on your life? (2) Ans. Yes. (3) If so, state in what, number of certificate, and give the amount. (4) Ans. $5,000. (5) Has any life insurance company or endowment order ever declined to grant insurance on your life? (6) Ans. No. (7) If so, what company or order and how long since? (State particulars concerning same.) (8) Ans. None.

III. (1) Has any opinion ever been sought from, or any consultation held with, any officer of any life insurance company or order, or any physician or surgeon, as to whether your life was safely insurable? (2) Ans. Yes. (3) If so, state in what and give
18 amount applied for. (4) Ans. Amount obtained, 5,000. (5) If yes, was the decision or opinion given that you were, or that you were not, safely insurable? (State particulars, time, and date.) (6) Ans. I was accepted.

IV. (1) Have you ever been abroad for the benefit of your health upon the advice of your physician? (2) Ans. No. (3) If so, state when, where, and for what trouble or disease. (State full particulars regarding date and duration.) (4) Ans. ——.

V. (1) This question must not be answered by the words "moderately" or "temperately," but a full and explicit answer must be given.

V. (1) Have you ever used intoxicating liquors? (2) Ans. Yes. (3) If so, state whether daily or occasionally and explicitly to what

extent. (4) Ans. Moderately. (5) Are you now in the daily habit of using intoxicating liquors; if so, how many times daily? (6) Ans. No.

VI. (1) Do you use morphine, opium, or other sedatives in any form? (2) Ans. No. (3) If so, what occasions their use, and how often do you use them? (4) Ans. ——. (5) Is it upon the advice of a physician? (6) Ans. ——.

VII. (1) Have you ever had, during the last seven years, any sickness or disease necessitating the employment of a physician? (State particulars fully.) (2) Ans. No.

VIII to XII. In stating the cause of death avoid such expressions as "general debility," "change of life," "fever," "dropsy," "exposure," "nothing hereditary," or any such indefinite terms.

VIII. (1) What ages did or have your grandparents attained?

Paternal. ——. Paternal. ——.

(2) Living: Maternal; dont remember. (3) Maternal. ——. (4) Which parent do you mostly resemble? (5) Ans. Mother.

19 IX. (1) Are your parents living? Give their age and state of health.

Age, if living.	State of health when last heard from.
(2) Father, dead.	(3) Dead.
(6) Mother, 72.	(7) Good.

Age at death. Cause of death. (State definitely the cause of death.)

(4) 49. (5) Chronic *diaohera.*

(8) ——. (9) ——.

X. (1) How many brothers have you had? No. 2. Give age or ages of brothers living here. (2) ——. The state of their health here. (3) Dead. Age at death. (4) 14, 28. Cause of death. (State definitely the cause of death.) (5) Drowning. Killed in battle.

XI. If the expression "child-birth" is used, be particular to state how long after delivery, and also whether there were any symptoms of chest troubles.

XI. (1) How many sisters have you had? No. 1. Give age or ages of sisters living here. (2) 36. The state of their health here. (3) Good. Age at death. (4) Cause of death. (State definitely the cause of death.) (5) ——. ——.

XII. (1) Have either of your grandparents, parents, uncles or aunts, brothers or sisters ever had consumption, scrofula, insanity, cancer, or any hereditary disease? (2) Ans. No.

XIII. (1) What amount of endowment do you desire, $1,000, $2,000, or $3,000? $3,000; 4th class. (2) To whom do you want the endowment paid? (An applicant must designate as beneficiary such person or persons as may be related to or dependent upon him for support, or he can make it payable to a brother knight, to his subordinate lode of the Knights of Pythias, or to his section of the endowment rank, or to his betrothed. The name and relationship of the beneficiary or beneficiaries must be given.) To my wife, Eugenie Kalinski.

20 Please read carefully the following declaration and agreement, and observe its import:

I declare that I am not now a member of the endowment rank and have not been rejected within the past six months. I declare, furthermore, that all of the above statements are in my handwriting and are true to the best of my knowledge and belief, and that I have not concealed or omitted to state anything regarding my health, past or present, affecting the expectancy of my life, and that I hereby consent and agree that any untrue statement made in this application or to the medical examiner, or any concealment of facts touching my health or expectancy of life, or for failure or neglect to pay assessments or dues as prescribed by the laws of the rank or order or for other causes, or voluntarily severing my connection with the order, shall work a forfeiture to all my rights and the rights of my heirs and beneficiaries to all benefits and privileges accruing to members of this rank.

I hereby agree that I will punctually pay all dues and assessments for which I may become liable, and that I will be governed, and this contract shall be controlled, by all the laws, rules, and regulations of the order governing this rank now in force or that may hereafter be enacted, or submit to the penalties therein contained; to all of which I willingly and freely subscribe.

Dated at New Orleans this the 23d day of May, 1887.

(Signed) A. KALINSKI,

Member of Syracuse Lodge, No. 50, Knights of Pythias.

CITY OF NEW ORLEANS, }
State of Louisiana. }

21 These questions are to be asked and the answers written by the medical examiner only, and in his handwriting, no third person to be present at the examination; nor should the medical examiner frame any answers to the questions propounded; the replies to each and every question to be plainly expressed.

XIV. (1) Are you now in good health? (2) Ans. Yes. (3) Do you ordinarily enjoy good health? (4) Ans. Yes.

XV. Answer "yes" or "no," as the case may be, opposite each. If you have had either, state how long since, giving full particulars.

XV. (1) Have you ever been predisposed to or had any of the following diseases or affirmities? (2) Ans. No.

1. Apoplexy? No.
2. Asthma? No.
3. Bronchitis or habitual cough? No.
4. Cancer or any tumer? No.
5. Consumption? No.
6. Colic? No.
7. Constipation? No.
8. Disease of the brain? No.
9. Disease of the bowels? No.
10. Disease of the heart? No.

11. Disease of the liver? No.
12. Disease of the bladder? No.
13. Disease of the kidneys? No.
14. Dizziness? No.
15. Discharges from ear? No.
16. Dropsy? No.
17. Diarrhœa? No.
18. Delirium tremens? No.
19. Dysentery? No.
20. Dyspepsia? No.
21. Erysipelas? No.
22. Eruption or disease of skin? No.
23. Fevers of any kind? No.
24. Fistula in ano? No.
25. Fits or convulsions? No.
26. Frequent desire to urinate? No.
27. General debility? No.
28. Gout? No.
29. Gravel? No.
30. Headache, frequent or severe? No.
31. Insanity? No.
32. Jaundice? No.
33. Lumps or swelling in any part of the body? No.
34. Pain in back? No.
35. Pneumonia? No.
36. Pleurisy? No.
37. Paralysis? No.
22 38. Piles? No.
39. Rheumatism? No.
40. Rupture? No.
41. Small-pox? No.
42. Spitting or raising of blood or other hemorrhages? No.
43. Swelling of feet, hands, or eyelids? No.
44. Stricture of urethra? No.
45. Syphilis or gonorrhea? No.
46. Scrofula? No.
47. Varicose veins? No.
48. Ulcers or open sores? No.
49. Have you either now; if so, what is it? Ans. No.

XVI. (1) Have you ever had or have you now any other disease or infirmity than above mentioned? (2) Ans. No. (3) Have you ever met with any accident or personal injury or undergone any surgical operation? (State particulars.) (4) Ans. Yes; hand and foot broken.

XVII. (1) Have you been successfully vaccinated? (2) Ans. Yes. (3) When were you last vaccinated? (4) Ans. 1877.

XVIII. (1) Are you aware of anything regarding your health, habits, circumstances, or family history, not already stated, that should be known in order to fairly estimate the risk upon your life? (2) Ans. No. (3) Have you been liable to cough, difficulty of breathing, habitual expectoration, pain in the chest, or any other

pulmonary symptoms, or palpitation of the heart? (If so, state particulars.) (4) Ans. No.

XIX. (1) Are you willing that your family physician should, in the interest of the endowment rank, give it all the information in his power regarding your physical condition, habits, and general health? (2) Ans. Yes. (3) Give name and address of your family physician. (4) Ans. Dr. Huhner, 54 Annunciation St., N. O.

☞Answer each question briefly, but completely.

I hereby further declare that I have understood all the above questions put to me by the medical examiner and the answers thereto, and that the same are warranted by me to be true,
23 and that I am the same person described above.

(Signed) ACHILLE KALINSKI,
Applicant for Membership in the Endowment Rank.

Witness:
(Signed) J. C. BEARD, M. D.

Special Instructions to Section Medical Examiners.

It is expected that the medical examiner will familiarize himself with the "Rules for medical examiners for the examination of applicants for the endowment rank, Knights of Pythias," as to him the highest interests of the endowment rank are entrusted; and it is also expected that he will communicate directly with the medical examiner-in-chief any additional information bearing on this case. Such communications will be held strictly confidential.

Medical Examiner's Certificate.

XX. (1) Have you carefully questioned the applicant concerning the matters mentioned in questions I to XIX, and are statements made apparently correct? (2) Ans. Yes. (3) What is your opinion of the influence of his occupation on the risk? (4) Ans. Favorable.

XXI. (1) Height, 5 feet 10 inches. (2) Weight, 154 pounds. (3) Number of inches around the bare chest: On full inspiration, 35 inches; on deep inspiration, 33 inches. (4) Girth of waist, $32\frac{1}{2}$ inches. (5) Figure, erect. (6) General appearance (see rules for med. ex's), healthy.

XXII. (1) What is your opinion in regard to the healthfulness of his place of business or residence? (2) Ans. Good. (3) What is your opinion in regard to any former injury or sickness? (4) Ans. Good.

XXIII. (1) Has the applicant the appearance of one addicted to the use of intoxicating beverages? (2) Ans. No. (3) If so,
24 to what extent? (State fully and explicitly all you know regarding this question.) (4) Yes. —.

XXIV. (1) Is there anything in his speech, looks, gait, or manner of conducting himself that would lead you to suspect that the applicant has any disease, organic or functional, of the brain or any

other portion of his nervous system or any predisposition thereto? (2) Ans. No.

XXV. (1) Has the applicant paralysis, cramps, tremor, atrophy, or rigidity in any portion of his muscular system? (2) Ans. No. (3) Is his gait firm and elastic? (4) Ans. Yes.

XXVI. (1) Upon auscultation and percussion is the respiratory murmur clear and distinct over both lungs? (2) Ans. Yes. (3) Is the character of the heart's action uniform, free, and steady? (4) Ans. Yes. (5) Are its sounds regular and normal? (6) Ans. Yes. (7) Are the respirations full, easy, and regular? (8) Ans. Yes. (9) Number of respirations per minute? (10) Ans. 18 (11) Rate of pulse while standing? (12) Ans. 82 per minute. (13) Rate of pulse while sitting? (14) Ans. 70 per minute. (15) Does it intermit or become unsteady or irregular? (16) Ans. No. (17) Are there any indications whatever of disease of the organs of respiration? (18) Ans. No. (19) Are there any indications whatever of disease of the heart or blood-vessels? (20) Ans. No.

XXVII. (1) Is the applicant deaf, lame, or has he any natural or other deformity? (2) Ans. No. (3) Is he ruptured? (4) Ans. No. (5) Is it single or double? (6) Ans. ——. (7) Is it reducible or not? (8) Ans. ——. (9) Is a suitable truss worn? (10) Ans. ——. (11) If ruptured hereafter, does he agree to habitually wear a suitable truss? (12) Ans. Yes.

XXVIII. (1) Are the functions of the abdominal and urinary organs in a healthy condition? (2) Ans. Yes. (3) Are there
25 any indications whatsoever that the applicant is not entirely well and in good health? (4) Ans. No. (5) Do you consider the party in all respects safely assurable? (6) Ans. Yes. (7) Do you recommend him for membership? (8) Ans. Yes.

I hereby declare that I have this day carefully examined the above-named applicant in accordance with the rules for medical examiners furnished me, and that I have written and attentively considered the foregoing statement made by him and witnessed his writing the signature as appears upon the reverse of this document.

Dated at New Orleans this 24th day of May, 1887.

(Signed) J. C. BEARD, M. D.,
Medical Examiner for Section No. 363, Graduate of N. O. School of Med., Medical College at N. O., Class of 1, '60, & 1, '61.

Certificate of Lodge.

This is to certify that Brother Knight Achille Kalinski is a member of the knight's rank of Syracuse lodge, No. 50, of the grand jurisdiction of La., city or town of New Orleans, in good standing, and that his dues are paid to March 31st, 1887.

(Signed) EMMANUEL BOHNER,
Master of Finance.

[Impress Lodge Seal Here. Seal.]

Attest: (Signed) T. J. McCARTHY,
Acting Keeper of Records and Seal.

4—1000

Certificate of President and Secretary, Section No. —.

We hereby certify that the declarations made herein and to the medical examiner are true to the best of our belief.

26 (Signed) J. C. BEARD, *President.*
W. GENESTE, *Secretary.*

Certificate of Obligation.

I hereby certify that the obligation was administered to the within-named applicant on the 11th day of July, 1887.

[Impress Section Seal Here. Seal.]

(Signed) W. GENESTE, *Secretary.*

27 EXHIBIT "B1."

Extracts from constitution of the endowment rank, Knights of Pythias of the World, adopted by supreme lodge June 12 to 23, inclus., 1888. Referred to in bill of exceptions and filed Feb'y 24, 1893.

Constitution of the Endowment Rank, Knights of Pythias of the World.

Adopted at the fifteenth session of the supreme lodge, held at Cincinnati, O., June 12 to 23, inclus., 1888.

Also Revised General Laws and Regulations.

Adopted by the board of control Oct. 24, 1890.

* * * * * * *

Constitution of the Endowment Rank, Knights of Pythias of the World.

* * * * * * *

ARTICLE VIII.

Composition of the board.

* * * * * * *

SEC. 2. The board of control shall be composed of the supreme chancellor, *ex officio*, and three members of the supreme lodge, who shall be members of the endowment rank, and shall be elected by the supreme lodge as follows: One for the term of six years,
28 one for the term of four years, and one for the term of two years, and at each biennial session of the supreme lodge one member of said board shall be elected for a full term of six years. The supreme secretary shall be secretary of the board. In case of the death, resignation, or removal of any or either of the members, the supreme chancellor is hereby authorized to fill such vacancies by appointment. The member or members so appointed by the supreme chancellor shall serve until the first session of the supreme lodge held after such appointment or appointments were made.

Powers of the board.

SEC. 3. All powers now vested by existing laws in the board of control, finance committee, supreme chancellor, supreme keeper of records and seal, supreme master of exchequer, and supreme secretary are hereby transferred to the board of control of the endowment rank.

SEC. 4. The board shall, within thirty days after their election, meet and organize by electing one of their members president, who shall perform the duties hereinafter provided.

SEC. 5. The board shall have entire charge and full control of the endowment rank, subject to such restrictions as the supreme lodge may from time to time provide. They shall hear and determine all appeals, and their findings shall be final, unless reversed by the supreme lodge in session. They are hereby authorized to annul any certificate of endowment when, upon investigation, they find that such certificate has been procured by misrepresentation or fraud.

* * * * * * *

SEC. 9. The board is hereby authorized to enact general laws, rules, and regulations, in conformity with this constitution, for the government of sections and the membership of the endow-
29 ment rank, and alter and amend such general laws, rules, and regulations when, in their judgment, the needs of the rank require such action.

* * * * * * *

EXHIBIT "B²."

Extracts from revised general laws and regulations adopted by board of control Oct. 24, 1890. Referred to in bill of exceptions and filed Feb'y 24, 1893.

General Laws, Rules, and Regulations for the Government of Sections of the Endowment Rank, Knights of Pythias of the World.

Revised and adopted by the board of control of the endowment rank, Knights of Pythias of the World.

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ARTICLE III.

Officers and their duties.

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SEC. 5. The secretary shall receive all applications for membership made out in proper form and accompanied by the legal fees. Upon the return of said application by the medical examiner-in-chief approved, he shall at once inform the applicant, and the obligation shall be administrated in accordance with article II, section 1, of these laws. When said applicant shall have taken the obli-

gation as required by law, the secretary shall certify the fact on the application, and shall at once forward it, with the legal fees and assessment, as provided for in article III of the constitution, to the supreme secretary. He shall keep a faithful record of the
30 business of the section transacted in the meeting or by the authorized officers during recess. The secretary shall keep a financial account with each member of the section, and in January of each year he shall furnish to the master of finance of the lodge or lodges to which the members of the section belong a list of the names of such members, and request said officer to promptly inform him whenever a member on said list becomes in arrears to the lodge for an amount equal to one year's dues, or withdraws his membership by card, or is suspended therefrom for any cause, and on the first regular lodge meeting in January of each year to note the financial standing of the members so reported and return to him said list with such notations.

He shall keep a record of the P. O. address of each member, and any change thereof of which he has notice.

He shall use the books and blanks and receipts furnished by the the supreme secretary, and perform all other duties required of him by the constitution and laws of the endowment rank.

Before entering on the discharge of his duties he shall enter into and acknowledge a bond of the prescribed form, in such penalty as the section may determine, payable to the president of the section, with sureties by him deemed sufficient, for the faithful discharge of his duties as secretary.

* * * * * * *

Article VIII.

Members in arrears for lodge dues.

Section 1. When a member of the endowment rank becomes in arrears to his lodge for an amount equal to one year's dues he shall forfeit his membership in the section and said rank and render void his endowment certificate.

In case of such forfeiture he may again become a member
31 of the endowment rank by making application in the form prescribed for new applicants, which must be accompanied by the forfeited certificate and the proper fees.

* * * * * * *

Exhibit "C."

Compilation of grand-lodge laws, together with the subordinate-lodge constitution and by-laws of Syracuse lodge, No. 50, Knights of Pythias, located at New Orleans, La.

* * * * * * *

Declaration of Principles of the Knights of Pythias.

Recognizing the universality of human brotherhood, its organization is designed to embrace the world within its jurisdiction; intended solely and only to disseminate the great principles of friendship, charity, and benevolence, nothing of a sectarian or political character is permitted within its portals.

Toleration in religion, obedience to law, and loyalty to government are its cardinal principles.

Misfortune, misery, and death being written in fearful characters on the broad face of creation, our noble order was instituted to uplift the fallen, to champion humanity, to be his guide and hope, his refuge, shelter, and defence; to soften down the asperities of life, to subdue party spirit, and by the sweet and powerful attractions of the glorious trinity of friendship, charity, and benevolence to bind in one harmonious brotherhood men of all classes and all opinions.

The brightest jewels which it garners are the tears of widows and orphans, and its imperative commands are to visit the
32 homes where lacerated hearts are bleeding; to assuage the sufferings of a brother, bury the dead, care for the widow, and educate the orphan; to extend charity towards offenders, to construe words and deeds in the least unfavorable light, granting honesty of purpose and good intentions to others, and to protect the principles of knighthood unto death.

Its laws are reason and equity, its cardinal doctrines impose purity of thought and life and love of truth; its intention is peace on earth and good will toward all mankind.

No human institution is better calculated to promote the happiness and well-being of man. It invites to its lodges the sons of virtue, of love and peace, that they may be connected by vows of eternal amity in a holy alliance, and with their best endeavors for mutual and general advantage; it brings together men who are estranged from each other by climate, language, and education, and teaches them that they are children of one Almighty Father, and that therefore they should love as brethren; it teaches no creed in religion but that of dependence upon and accountability to the Eternal and Almighty God; it embraces in one communion the good and true of all sects and opinions.

Having these principles in view, its members will endeavor to exemplify them by practical tests, and if by the grace of God it shall successfully carry out this object, they will feel that their mission has not been in vain.

The Constitution for Each Subordinate Lodge, as Revised and Amended.

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ARTICLE IV.

Duties of Officers.

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33 SEC. 6. Master of finance.—The master of finance shall furnish the keeper of records and seal with the amount of receipts, itemized, previous to the close of each meeting at the end of each semi-annual term, a list of all past chancellors not entitled to admission to the grand lodge, and such other information as the lodge may require.

He shall also furnish to the secretary and treasurer of any section of the endowment rank to which his lodge is tributary such information concerning the standing of members as he may from time to time require.

SEC. —. * * *

ARTICLE VII.

Qualifications for membership and fee for ranks.

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SEC. 3. Reinstatement to membership.—Any person who may have been suspended from membership in this lodge for non-payment of dues, making application for reinstatement and accompanying the same with all indebtedness on the books of the lodge against him, can be balloted for at a regular meeting upon motion of any member present; but after six months have elapsed such application from the person suspended shall be referred to an investigating committee in like manner as an original application. If the application is made within six months after suspension it will require a majority of the votes cast to elect or reject, but after that time it will require but two black balls to reject.

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ARTICLE IX.

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SEC. 2. Dues.—Every member shall pay into the treasury of this lodge as dues not less than one dollar per quarter and the amount specified for funeral tax, to commence with his charging as
34 knight. Such dues become due and payable at the last meeting in each quarter, when the order of business "collection of dues, fees, and fines" is reached.

ARTICLE X.

Benefits.

SECTION 1. This lodge shall provide for the payment of weekly benefits in case of disability, and of funeral benefits in case of death of a member. Weekly benefits shall not be less than one dollar per week, and funeral benefits shall not be less than twenty dollars.

In case of disability, the lodge shall appropriate the amount prescribed, provided the relief committee has ordered the same to be paid, and the member is not in arrears for dues, or said disability has not been caused by intemperance, improper or immoral conduct.

In case of the death of a member in good standing, the lodge shall appropriate the amount prescribed in its by-laws towards defraying the expenses of the funeral. The chancellor commander or the relief committee shall apply the money to the purpose specified, and return the surplus, if any, to the master of finance, with the report of the relief committee; but in cases where the member has a family the surplus must be paid to them.

In case of the death of the wife of a member in good standing, the lodge shall pay to said brother the sum of not less than ten dollars to assist him in defraying the expense of her funeral, provided that the relief committee has ordered the same to be paid.

SEC. 2. Members who cannot claim benefits.—First, members cannot claim weekly benefits when disabled by any disease or
35 infirmity with which they were afflicted previous to their initiation or admission in the lodge, or from any sickness or other disability originating from intemperance, improper or immoral conduct, or while charges are pending against them under the penal provision of the law; but when a member has been exonerated or acquitted, after due trial, he may claim and receive the benefits for the time, if otherwise entitled to them. If disabled so as to be prevented from following his usual occupation, but able to pursue some other business, he cannot receive benefits; nor can he, if taken sick or disabled when in arrears, be entitled to benefits during such sickness or disability.

A member, while receiving weekly benefits from the lodge, cannot become in arrears so as to debar him therefrom, the relief committee being authorized to pay the master of finance from the amount drawn for his weekly benefits a sum sufficient to prevent him becoming in arrears to the lodge to the amount of three months' dues.

2d. Fines and assessments cannot be added to dues to work forfeiture of good standing, except funeral assessments and fines imposed under the penal code, which shall be added to dues, so as to cause suspension; however, any member in arrears for any fines or assessments shall not be entitled to weekly benefits except the minimum benefit of one dollar.

If a knight shall become in arrears for six months and pays the same while he is sick or disabled, his good standing shall date from his recovery.

SEC. 3. Members not in good standing at death.—In the event of the death of a member who at the time of his death was in arrears for dues, the funeral benefits shall not be paid: Provided, this section shall not be construed to prohibit the appropriation for the decent interment of such member in cases where, from his
36 own property or means, a suitable provision cannot be made for that purpose; and it shall be the duty of the relief com-

mittee, upon full inquiry, to determine such facts and to take charge of the funeral, if within a proper distance, and make a report of their investigations in relation thereto and the expenditures made therefor.

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ARTICLE XVI.

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Members suspended.

SEC. 5. A member who is in arrears to the amount of one year's dues or their equivalent, and has been notified to pay the same, shall be declared suspended by the C. C. in open lodge, and a record of such suspension shall be entered on the minutes of the lodge.

* * * * * * *

Syracuse Lodge, No. 50, Knights of Pythias.

By-laws.

* * * * * * *

ARTICLE V.

Duties of officers.

SEC. 3. The duties of the master of finance shall be such as are prescribed in the constitution. He shall be the collector of the lodge, and shall for such service receive a compensation of twenty dollars ($20) a year, payable quarterly, by the lodge. He shall notify in writing all members who are about to become in arrears, and shall again notify them in writing on the eve of suspension. It shall be his duty to notify the lodge when a member owes to the amount of twelve (12) months' dues or its equivalent, as prescribed by section 2, article X.

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37 ARTICLE XIV.

Arrearages.

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SEC. 3. A knight who is one year in arrears for dues, and after having been previously duly notified of said arrears and neglecting to pay the same, shall be suspended by the chancellor commander in open lodge and a record of the same kept in the minutes.

* * * * * * *

EXHIBIT D TO BILL OF EXCEPTIONS.

Journal of the Supreme Lodge Knights of Pythias, vol. 5, 1887–'8, page 4097.

The supreme secretary submitted the following to the board of control:

"Brother John A. Manikheim, a member of section No. 63, endowment rank, of Washington, D. C., died on the 11th day of January, 1887.

"At the time of his death he was in arrears to his lodge for one year's dues, but had paid all of his assessments to his section of the endowment rank.

"Upon receipt of the information, the supreme secretary refused to furnish a blank proof of death, and instructed the secretary of said section to return to the beneficiaries the monthly assessments, which were erroneously collected from said Manikheim, which was refused by said beneficiaries, who demanded payment in full of the certificate of membership."

Decision: The board of control, after a very careful consideration of all the facts in this case, decided, in view of the fact that the keeper of records and seal of the lodge to which the late John A. Manikheim belonged failed to notify the section of which he was a member of the fact that said Brother Manikheim was in arrears for dues to said lodge, and that said lodge had failed to suspend said Manikheim, in accordance with the law, and that said section of the endowment rank had received the monthly assessments of said Manikheim up to the date of his death, the endowment rank is liable for the full amount of the endowment, and the supreme secretary is instructed to pay the beneficiaries the amount due.

Page- 4098 and 4099.

The property carrying into effect the provisions of section 1, of article 10, of the general laws of the endowment rank, I issued the following instructions to grand chancellors and to sections of the endowment rank:

OFFICERS SUPREME CHANCELLOR
KNIGHTS OF PYTHIAS OF THE WORLD.

To —— ——, grand chancellor grand lodge of Knights of Pythias.

DEAR SIR AND BROTHER: In view of the provisions of section 1 of article X of the general laws of the endowment rank, Knights of Pythias, that "when a member of the endowment rank becomes in arrears to his lodge on account of dues for more than six months he shall forfeit his membership in the section and said rank, and render void his endowment certificate;" it is necessary
38 that the secretaries of the various sections of said endowment rank be duly notified when the members of said rank become in arrears for dues to their respective lodges, so proper action can be taken in the matter at issue, therefore I respectfully request that you, as grand chancellor, officially instruct the various subordinate lodges in your jurisdiction to forward to the secretary or secre-

taries of such section or sections of the endowment rank, as are tributary to the subordinate lodge or lodges in the locality in which the lodge is situated, an official notice of the fact that such member or members are in arrears for dues as aforesaid, said notice of arrearages to be signed by the master of finance and attested by the keeper of records and seal, with the seal of the lodge attached.

To properly carry into effect the foregoing, the secretaries of the various sections of the endowment rank will at once be instructed to officially certify to the keeper of records and seal of the respective lodges to which the members of the sections belong a full and complete list of the members of said section, and any additions thereto, holding membership in said lodges, said list to be filed with the master of finance of each lodge from whom all notice of arrears emanate.

Done at Cincinnati, Ohio, on this 20th day of May, 1887, P. P. XXIV.

HOWARD DOUGLAS,
Supreme Chancellor.

Attest: R. E. COWAN,
Supreme Keeper of Records and Seal.

[SEAL.] OFFICE OF SUPREME CHANCELLOR,
KNIGHTS OF PYTHIAS OF THE WORLD.

To the officers and members of all sections of the endowment rank, Knights of Pythias:

BROTHERS: The laws of the endowment rank provide that a member shall forfeit his certificate and membership in his section and in said rank if in arrears to his subordinate lodge for more than six months' dues. See section 1, of article X, General Laws of the Endowment Rank.

To permit this law to be properly enforced, I respectfully request and direct that the secretary of each section of the endowment rank shall immediately forward to the keeper of records and seal of the respective subordinate lodges of the Knights of Pythias, to which the members of the section belong a full and complete list of the members of such section; also to report without delay the name of every additional member when admitted to the section.

To further assist in the enforcement of the law, I have directed the grand chancellors of the several grand jurisdictions to order the various subordinate lodges in their jurisdictions to notify the secretaries of sections of endowment rank whenever any of the members of such lodge who belong to such section are in arrears for six months' dues, which notifications are to be signed by the master of finance and be attested by the keeper of records and seal with the seal of the lodge attached; upon receipt of which secretaries of sections will enter upon the books of the section the fact that the certificate and membership of the member of the section, so reported as being in arrears for dues to his lodge, are forfeited by reason of said arrears, and report the forfeiture to the supreme secretary upon

the regular remittance blank when the next monthly assessment is forwarded.

To enable the subordinate lodge to comply with the instructions, it is absolutely necessary that you immediately carry into
39 effect the directions contained therein; and to enable the supreme secretary to keep proper record, secretaries of sections will, as soon as they send the required list to the keeper of records and seal, notify said supreme secretary of the fact.

Done at Cincinnati, Ohio, this 20th day of May, 1887; P. P. XXIV.

HOWARD DOUGLASS,
Supreme Chancellor.

Attest: HALVOR NELSON,
Supreme Secretary of the Endowment Rank.

Page 4618.

The committee on endowment rank submitted the appended report, which was adopted by sections and then as a whole:

Document 226.

To the supreme lodge Knights of Pythias of the World:

Your committee on the endowment rank, to whom was referred that portion of the supreme chancellor's report relating to the endowment rank, report:

1. That they have had the same under consideration, and recommend the approval of all the decisions of the supreme chancellor, from 1 to 9 inclusive, except the second; and as to the second, we recommend that it be not approved on the ground that there is no law authorizing it.

2. That they also recommend the approvals of the decisions of the board of control, from 1 to 11 inclusive, except the third; as to the third, your committee recommend that it be not approved, on the ground of insufficient evidence.

3. That so much of the supreme chancellor's report as relates to official circulars issued by him, on matters pertaining to the endowment rank, your committee endorse.

4. That as to so much of said report as relates to the resignation of Halvor Nelson, and the appointment of Robert E. Cowen to fill the vacancy, your committee ask to be relieved from further consideration of the matter, as it has already been referred to the committee on appeals and grievances.

5. The act of the supreme chancellor in the appointment of W. B. Kennedy, to fill the vacancy occasioned by the death of R. E. Cowan, having been approved by the unanimous election of Brother

Kennedy, as supreme secretary of the endowment rank, no action by your committee is necessary.

Respectfully submitted.

J. A. HINSEY,
O. WHITMAN,
H. R. LOVELL,
D. J. HOLLAND,
G. J. L. FOXWELL,
Committee.

Application of Achille Kalinski, for membership in section 363 of endowment rank, K. of P., marked Exhibit "A," referred to in bill of exceptions and filed February 24, 1893.

Taken up in the original as per agreement copied at page 156 of this transcript.

Constitution of the endowment rank Knights of Pythias of the World, including revised general laws and regulations adopted by board of control, Oct. 24, 1890, marked Exhibit "B" 1 and Exhibit "B" 2, referred to in bill of exceptions and filed February 24, 1893.

Constitution and by-laws of Syracuse lodge, No. 50, Knights of Pythias, at New Orleans, La., marked Exhibit C, made part of bill of exceptions and filed February 24, 1893.

40 Copy.

Certificate of Membership.

No. 18061. Fourth class, $3,000.

Endowment rank of the order of Knights of Pythias.

This certifies that Brother Achille Kalinski received the endowment rank of the order of Knights of Pythias in section No. 363, on July 11, 1887, and is a member in good standing in said rank. And in consideration of the representations and declarations made in his application, bearing date of May 23, 1887, which application is made a part of this contract, and the payment of the prescribed admission fee, and in consideration of the payment hereafter to said endowment rank of all assessments as required, and the full compliance with all the laws governing this rank now in force or that may hereafter be enacted, and shall be in good standing under said laws the sum of three thousand dollars will be paid by the supreme lodge Knights of Pythias of the World, to Eugenie Kalinski, his wife, as directed by said brother in his application or to such other person or persons as he may subsequently direct by change of beneficiary entered upon the records of the supreme secretary of the endowment rank, upon due notice and proof of death, and good standing in the rank at the time of death and surrender of this certificate.

Provided, however, that if, at the time of the death of said brother, one monthly payment to the endowment fund by members holding an equal amount of endowment, shall not be sufficient to

pay the amount of endowment held by said brother, the benefit to be paid in case of death shall be a sum equal to one payment to the endowment fund by each member holding an equal amount of endowment. And it is understood and agreed that any violation of the within-mentioned conditions, or the requirements of the laws in force governing this rank, shall render the certificate and all claims null and void, and that the said supreme lodge shall not be liable for the above sum, or any part thereof.

In witness whereof we have hereunto subscribed our names and affixed the seal of the supreme lodge Knights of Pythias of the World.

Attest: HOWARD DOUGLASS,
Supreme Chancellor.

[SEAL.] R. E. COWAN,
Acting Supreme Keeper of Records and Seal.

Issued this 30th day of July, 1887, P. P. XXIV, at Washington, District of Columbia, and registered in Book 2, folio 62.

(Signed) W. B. KENNEDY,
Supreme Secretary.

Instructions Prayed by Counsel and Charge of Court.

Filed with bill of exceptions Feb'y 24, 1893.

KALINSKI
vs.
KNIGHTS OF PYTHIAS. } No. 12092.

1. The jury is instructed that the books of account kept by the Syracuse lodge of which the deceased, Achille Killinski, was a member, are (sufficient) competent evidence to be considered by them as with reference to his indebtedness at the date of his death, for lodge dues; and that if the jury find from these books of account that he was in arrears in the absence of proof which opposes or of proof showing payment of these dues, or error in the account, the entries in said accounts are conclusive proof of the amount shown thereby to be due.

41 2. If you find that Killinski was in arrears and indebted to his lodge for dues at the date of his death, in an amount equal to one year's dues, you must find as a conclusion from that fact, that he had forfeited his membership in the endowment rank, and that the plaintiff is not entitled to recover in the suit.

And the receipt of assessments by the officers of said endowment rank (which it is admitted have been tendered back), previous thereto, if in ignorance of the fact that he was so in arrears, was not a waiver of such forfeiture.

Circuit Court.

Mrs. KALINSKI
vs.
THE KNIGHTS OF PYTHIAS OF THE WORLD.

1. I charge the jury as requested by the defendant's counsel as to the proof — the arrearage due by Mr. Kalinski at the time of his death. The books of the defendants are competent proof and they are uncontradicted, and therefore establish the arrearages as having been $12.50.

2. As to the construction of the meaning, as matter of law, of the fundamental law and the orders of the defendant's organization, I adopt the views of the board of control of the defendant's order in the case of John A. Manikheim, and I instruct the jury if the jury find as facts that the keeper of records and seal of the lodge to which Mr. Kalinski belonged, failed to notify the section (of the endowment rank) of which he was a member of the fact that he was in arrears for dues to said lodge, and also that the said lodge failed to suspend Mr. Kalinski, in accordance with law, and also that the section of the endowment rank had received the monthly assessments of said Kalinski, up to the date of his death, then the verdict of the jury will be for the plaintiff and against the defendant for the sum of three thousand dollars with interest from judicial demand.

The question of fact upon which the forfeiture is claimed by the defendant must be established by a preponderence of evidence clear of any reasonable doubt as to its existance.

Before the defendant can claim a forfeiture of the contract they must show a full compliance upon their part with the laws and regulations made by themselves and claiming to govern said contract and any failure on their part which had a tendency to mislead the plaintiff the insured and caused him thus to neglect his part of the contract without causing any damage or injury to the defendant cannot avail the defendant.

That if the jury find from the law as given by the court that it was the duty of the officer to notify in writing all members who are about to become in arrears and again notify them in writing on the eve of suspension, and it is further made the duty of the keeper of records and seals to notify the lodge of members so in arrears, and the failure upon the part of said officer to perform said duty third parties cannot be made to suffer for said neglect.

If the jury believe from the evidence that the proper officer when notifying the deceased of his indebtedness granted him further time, and the deceased died before the expiration of that time, the action of said officer is binding upon the lodge, and no forfeiture can be claimed for the non-payment of said amount.

Whether assessments have been retained an unreasonable length of time and under such circumstances as to waive a forfeiture, is a question for the jury to determine.

42 *Motion for Writ of Error.*

Entered and filed February 24, 1893.

U. S. Circuit Court, Eastern District Louisiana.

Mrs. Eugenie Kalinski
vs.
The Supreme Lodge Knights of Pythias of the World. } No. 12092.

On motion of Rouse & Grant and J. Zach. Spearing, attorneys for defendant, and upon their suggestion that there is error in the final judgment rendered herein to defendant's prejudice—

It is ordered that a writ of error be granted defendant returnable to the United States circuit court of appeals, for the fifth circuit, within thirty days, and that said writ operate as a supersedeas upon defendant giving bond with good and solvent surety in the sum of three thousand six hundred dollars conditioned as the law directs.

Bond for Writ of Error.

Filed February 24th, 1892.

Know all men by these presents that we, the supreme lodge Knights of Pythias of the World, as principal, — Robert H. Marr, as surety, are held and firmly bound unto Mrs. Eugenie Kalinski in the full and just sum of three thousand six hundred dollars, to be paid to the said Mrs. Eugenie Kalinski, her certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of February, in the year of our Lord one thousand eight hundred and ninety-three.

Whereas, lately, at a circuit — of the United States, fifth judicial circuit, holding sessions in and for the eastern district of Louisiana, on the 11th day of February, 1893, in a suit depending in said circuit court, wherein the said Mrs. Eugenie Kalinski is plaintiff and The Syracuse Lodge Knights of Pythias of the World is defendant, judgment was rendered against the said Supreme Lodge Knights of Pythias of the World, defendant, and the said supreme lodge Knights of Pythias of the World having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Mrs. Eugenie Kalinski having issued, citing and admonishing her to be and appear at the United States circuit court of appeals for the fifth circuit within thirty days:

Now, the condition of the above obligation is such that if the said supreme lodge Knights of Pythias of the World shall prosecute its writ of — effect and answer all damages and cost if it fail to

make its plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) SUPREME LODGE K. OF P.,
[L. S.] P. pro. J. ZACH. SPEARING, *G. C.*
[L. S.] ROB'T H. MARR,
Surety for Thirty-six Hundred Dollars.

Approved February 25, 1893.
(Signed) EDWARD C. BILLINGS, *Judge.*

UNITED STATES OF AMERICA, *Eastern District of Louisiana,* } *ss:*

43 Personally appeared R. H. Marr, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the city of New Orleans, State of Louisiana, and is worth the full sum of three thousand six hundred dollars over and above all his debts and liabilities and property exempt from execution.

(Signed) ROB'T H. MARR.

Subscribed and sworn before me this 24th day of February, 1893.
(Signed) H. J. CARTER,
Commissioner U. S. Circuit Court,
Eastern District of Louisiana.

U. S. Circuit Court, Eastern District of Louisiana.

MRS. EUGENIE KALINSKI
vs.
THE SUPREME LODGE KNIGHTS OF PYTHIAS OF THE WORLD. } No. 12092.

It is agreed that the application of Achille Kalinski for membership in sect. 363 of defendant organization marked Exhibit A, and made part of the bill of exceptions may be sent up to the U. S. circuit court of appeals in the original as part of the record.

New Orleans, March 18, 1893.
(Signed) ROUSE & GRANT,
Att'ys for Pl'ff in Error.
M. MARKS,
WM. ARMSTRONG,
Att'ys for Def't in Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the circuit court of the United States for the eastern district of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Mrs. Eugenie Kalinski and The Su-

preme Lodge Knights of Pythias of the World, in the suit No. 12092 on the docket, wherein the said Mrs. Eugenie Kalinski is plaintiff and the said Supreme Lodge Knights of Pythias of the World is defendant, a manifest error hath happened, to the great damage of the said Supreme Lodge Knights of Pythias of the World, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals for the fifth circuit, together with this writ, so that you have the same at New Orleans, Louisiana, within 30 days from the date hereof, in the said United States circuit court of appeals to be then and there held, *and*, the record and proceedings aforesaid being inspected, the said United States circuit court of appeals may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 24th day of February, in the year of our Lord one thousand eight hundred and ninety-three.

[SEAL.] E. R. HUNT,
Clerk of the U. S. Circuit Court, Eastern District of La.

Feb'y 24th, 1893.

Allowed by—
EDWARD C. BILLINGS, *Judge.*

44 Endorsed: No. 12092. U. S. circuit court, eastern district of Louisiana, New Orleans division. Filed Feb. 24, 1893. E. R. Hunt, clerk.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Mrs. Eugenie Kalinski, New Orleans, La., Greeting:

You are hereby cited and admonished to be and appear before the United States circuit court of appeals for the fifth circuit, at New Orleans, Louisiana, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein The Supreme Lodge Knights of Pythias of the World is plaintiff *is plaintiff* in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 24th day of February, in

the year of our Lord one thousand eight hundred and ninety-three.

[SEAL.] EDWARD C. BILLINGS, *Judge.*

NEW ORLEANS, LA., *February* 24, 1893.

Service of the within citation accepted.

M. MARKS,
Att'y for Plaint.

Endorsed: No. —. U. S. circuit court, eastern district of Louisiana, New Orleans division. Filed February 24, 1893. E. Hunt, clerk.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, do hereby certify, that the foregoing 156 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial in the case of Mrs. Eugenie Kalinski *vs.* The Supreme Lodge Knights of Pythias of the World, No. 12092 of the docket of said court.

Witness my hand and the seal of said court at the city of New Orleans, this 22 day of March, A. D. 1893.

[SEAL.] E. R. HUNT, *Clerk.*

I, Edward C. Billings, United States judge of the eastern district of Louisiana, do certify, that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now the clerk of said court: that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 22 day of March, A. D. 1893.

EDWARD C. BILLINGS, *Judge.*

45 *Proceedings in United States Circuit Court of Appeals for the Fifth Circuit.*

United States Circuit Court of Appeals for the Fifth Circuit, November Term, 1892.

MONDAY, *June* 5, 1893.

(Extracts from the Minutes.)

THE SUPREME LODGE KNIGHTS OF PYTHIAS OF THE WORLD, Plaintiff in Error,
v.
Mrs. EUGENIA KALINSKI, Defendant in Error. } No. 123.

This cause came on to be heard this day, and, after argument by Mr. Charles S. Rice for plaintiff in error and by Mr. Morris Marx and by Mr. William Armstrong for defendant in error, was submitted to the court upon the briefs of counsel filed herein.

United States Circuit Court of Appeals for the Fifth Circuit, November Term, 1892.

TUESDAY, *June* 27, 1893.

(Extracts from the Minutes.)

THE SUPREME LODGE KNIGHTS OF PYTHIAS OF THE WORLD, Plaintiff in Error,
v.
Mrs. EUGENIA KALINSKI, Defendant in Error.

46 This cause came on to be heard this day on the transcript of the record from the circuit court of the United States for the eastern district of Louisiana, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court *and* that the judgment of said circuit court in this cause be, and the same is hereby, affirmed.

It is further considered and so ordered and adjudged by this court that the plaintiff in error, The Supreme Lodge Knights of Pythias of the World, and the surety on the bond herein, Robert H. Marr, be condemned to pay the costs of this cause in this court, for which execution may be issued out of said circuit court.

Petition for Writ of Error.

United States Circuit Court of Appeals for the Fifth Circuit.

SUPREME LODGE KNIGHTS OF PYTHIAS OF THE WORLD, Plaintiff in Error,
vs.
Mrs. EUGENIA KALINSKI, Defendant in Error. } No. 123.

Honorable Howell E. Jackson, associate justice Supreme Court of the United States:

47 The petition of The Supreme Lodge Knights of Pythias of the World, plaintiff in error in the above-entitled cause, with respect represents that there is error in the final judgment rendered in said cause on the 27th day of June, 1893, to its prejudice, as set forth in the annexed assignment of errors. Wherefore petitioner prays for the allowance of a writ of error in due form, directing said United States circuit court of appeal- for the 5th circuit to send the record and proceedings in said cause to the Supreme Court of the United States, to the end that said error may be corrected; that said writ may operate as a supersedeas upon plaintiff giving such bond as your honor may approve for that purpose, and petitioner prays that your honor will also sign citation, directed to the defendant in error, returnable according to law, and make such further orders in the premises as may be proper.

July 13, 1893.

(Signed) WILLIAM GRANT,
C. S. RICE,
J. ZACH. SPEARING,
Attorneys for Plaintiff in Error.

Endorsed: Filed August 3, 1893. J. M. McKee, clerk.

Order Allowing Writ of Error.

Let a writ of error be granted, with supersedeas, as prayed, upon the bond for five thousand dollars this day approved.

Nashville, July 20, 1893.

(Signed) HOWELL E. JACKSON,
Asso. Justice Supreme Court.

Endorsed: Filed August 3, 1893. J. M. McKee, clerk.

48 *Assignment of Errors.*

1st. Counsel for defendant in the circuit court having, upon the evidence adduced in the cause, requested the court to charge as follows: 1st. "The jury is instructed that the books of account kept by Syracuse lodge, of which the deceased, Achille Kalinski, was a member, are competent to be considered by them as evidence with

reference to his indebtedness at the date of his death for lodge dues, and if the jury find from the books of account that he was in arrears, in the absence of proof which opposes or of proof showing payment of these dues, or error in the account, the entries in said accounts are conclusive proof of the amount shown thereby to be due;" which charge the court gave as requested, but added thereto the following: "I charge the jury, as requested by defendant's counsel, as to the proof of the arrearages due by Mr. Kalinski at the time of his death. The books of defendant are competent proof, and they are uncontradicted, and therefore establish the arrearages as being $12.50."

2d. And the defendant thereupon further requested the court to charge the jury as follows: "If you find that Kalinski was in arrears and indebted to his lodge for dues at the date of his death in an amount equal to one year's dues, you must find as a conclusion from the fact that he had forfeited his membership in the endowment rank, and that the plaintiff is not entitled to recover in this suit,
and the receipt of assessments by the officers of said endow-
49 ment rank (which it is admitted have been tendered back, as
herein above set forth) previous thereto, if in ignorance of the fact that he was so in arrears, was not a waiver of such forfeiture;" but the court refused to give the charge as requested, but in lieu thereof charged the jury as follows: "As to the construction of the meaning as matter of law, of the fundamental law and of the orders of defendant's organizations, I adopt the views of the board of control of the defendant's order in case of John A. Manikheim, and I instruct the jury, if the jury finds as a fact that the keeper of records and seal of the order to which Mr. Kalinski belonged failed to notify the section of which he was member of the fact that he was in arrears for dues to said lodge, and also that the lodge failed to suspend Mr. Kalinski in accordance with law, and also the section of the endowment rank had received the monthly assessments of said Kalinski up to the date of his death, then the verdict will be for the plaintiff and against the defendant for the sum of three thousand dollars, with interest from judicial demand."

The circuit court having charged the jury as firstly requested, it was error to refuse the 2d charge asked for by defendant's counsel, and error to give the charge above set forth in lieu thereof, and it was error in the United States circuit court of appeals to affirm the ruling of said court in that respect.

2d. The said circuit court of appeals erred in holding that there could be no forfeiture of Kalinski's membership and certificate in
the endowment rank of the order on account of the matters
50 set up in defendant's plea and under the proofs by reason of
the constitution of the order.

3d. The said circuit court of appeals erred in holding that art. 8, sect. 1, of the Laws, Rules, and Regulations of the Endowment Rank, which reads as follows: "When a member of the endowment rank becomes in arrears to his lodge for an amount equal to one year's dues he shall forfeit his membership in the section and said rank

and render void his endowment certificate," is in violation of the constitution of the rank and order & therefore void.

4th. The circuit court of appeals erred in holding that Kalinski must have been suspended or dismissed from his lodge before a forfeiture of his certificate in the endowment rank could accrue.

5th. It was not error in the said circuit court of appeals to adopt*ed* the decision of the board of control in the Manikheim case as the law of this case.

6th. It was error not to reverse the judgment of the circuit court and direct a new trial.

(Signed) C. S. RICE,
WILLIAM GRANT,
J. ZACH. SPEARING,
Attorneys for Plaintiff in Error.

Endorsed: Filed August 3, 1893. J. M. McKee, clerk.

51 *Writ of Error Bond.*

Know all men by these presents that we, the Supreme Lodge Knights of Pythias of the World, as principal, and Robert H. Marr, as surety, are held and firmly bound unto Mrs. Eugenia Kalinski in the full and just sum of five thousand and $\frac{00}{100}$ dollars, to be paid to the said Mrs. Eugenia Kalinski, her certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 13th day of July, in the year of our Lord one thousand eight hundred and ninety-three.

Whereas lately, at a term of the United States circuit court of appeals for the fifth circuit, in a suit depending in said court between The Supreme Lodge Knights of Pythias of the World, plaintiff in error, and Mrs. Eugenia Kalinski, defendant in error, a judgment was rendered against the said Supreme Lodge Knights of Pythias of the World and in favor of the said Mrs. Eugenia Kalinski, and the said Supreme Lodge Knights of Pythias of the World having obtained a writ of error and filed a copy thereof in the clerk's offic of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Mrs. Eugenia Kalinski, citing and admonishing her to be and appear before the United States Supreme Court to be holden at Washing., District of Columbia, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Supreme Lodge Knights of Pythias of the World, plain-
52 tiff, shall prosecute said writ of error to effect and answer all damages and costs if it fail to make its plea good, then

the above obligation to be void; else to remain in full force and virtue.

(Signed) SUPREME LODGE K. OF P., [SEAL.]
Per J. ZACH. SPEARING, [SEAL.]
ROBT H. MARR. [SEAL.]

Sealed and delivered in the presence of—
(Signed) WM. GRANT.

Approved by—
HOWELL E. JACKSON,
Asso. Justice Supreme Court.

Rob't H. Marr, being duly sworn, says that, all his debts and liabilities being paid, he is well worth the sum of five thousand & $\frac{00}{00}$ dollars, and that he resides in the city of New Orleans, State of Louisiana.

(Signed) ROBT H. MARR.

Sworn to and subscribed before me this 10th day of July, 1893, at New Orleans, La.

[SEAL.] (Signed) CHAS. B. UPTON,
Notary Public.

53 *Opinion.*

United States Circuit Court of Appeals, Fifth Circuit, November Term, 1892.

THE SUPREME LODGE KNIGHTS OF PYTHIAS OF THE WORLD, Plaintiff in Error,
v.
MRS. EUGENIA KALINSKI, Defendant in Error. } No. 123.

Error to the United States circuit court, eastern district of Louisiana.

Before Pardee and McCormick, circuit judges, and Locke, district judge.

This was a suit brought in the circuit court by Eugenia Kalinski, as beneficiary of Achille Kalinski, against the supreme lodge Knights of Pythias upon a certificate of membership of the endowment rank of the order of Knights of Pythias, certifying that he had received the rank of the order, and in consideration of certain payments and the performance of certain conditions his wife, the beneficiary, would be paid upon his death three thousand dollars. In answer, defendant below, plaintiff in error here, set up that one of the conditions of Achille Kalinski's application was that he should keep his lodge dues fully paid, and with that condition he had not complied; that one of the rules of this endow-
54 ment rank was that if "any member of the endowment rank became in arrears to his lodge for an amount equal to one year's dues, he shall forfeit his membership in the section and said

rank and render void his endowment certificate;" that Kalinski, the deceased, at the time of his death, although he had paid the assessments to the endowment rank in full, was in arrears to the Syracuse lodge, of which he was a member, for more than a year's dues, and that he had forfeited his membership and the certificate was null and void. A trial being had and a verdict found for plaintiff for the full amount claimed, a new trial was granted, which also resulting in a verdict for the plaintiff a writ of error was sued out, in which was assigned as error the refusal of the court to give the charge as asked and giving the charge as it was given. These alleged errors and the facts proven in the case are fully set out in the bill of exceptions, which is:

"Be it remembered that at the trial of this cause before the jury on the 11th day of February, 1893, the defendant, in support of its answer and plea, offered in evidence: 1st, the application of Achille Kalinski for membership in section 363 of the endowment rank of the order of the Knights of Pythias, hereto annexed and marked Exhibit 'A' as part of this bill; 2nd, the constitution of the endowment rank of Knights of Pythias of the World, including the revised general laws and regulations adopted by the board of control October 24, 1890, marked Exhibit 'B' 1 and Exhibit B 2, made part of this bill; 3d, also the constitution and by-laws of Syracuse lodge, No. 50, Knights of Pythias, located at New Orleans, La., marked Exhibit C and made part hereof; that all of said documents were received in evidence without objection, and were accepted by the court as determinative of the rights of the parties in the cause of action herein. And it further appearing to the court from the books of account kept by the said Syracuse lodge, No. 50, and other evidence that the said Achille Kalinski was indebted to said lodge, of which he was a member, on the 31st day of March, 1891, and at the date of his death, May 24th, 1891, in the sum of $12.50 for dues owing by him to his said lodge under by-law, art. 4, page 46, and art. 13, page 54, of said lodge, which sum was in excess of one year's dues he was required to pay as dues, but that he had not been suspended
55 by his lodge for that reason before his death under the provisions of sec. 5 of art. 16 of the constitution of the lodge and sec. 3 of article 14 of the by-laws, although he had received notice from the proper officer of the lodge to pay the same and had been told to pay the same before the next lodge meeting, but that he died before such next meeting without having paid the same; and it further appearing as a fact, not disputed, that the keeper of records and seals of Syracuse lodge, No. 50, had, under sec. 6, article 4, of the constitution of the lodge, failed to notify the section of the endowment rank to which Kalinski belonged that he was in arrears, and that the said Syracuse lodge failed to suspend him on account of arrears, and that the assessments due by Kalinski to the endowment rank were received in ignorance of the fact that he was so in arrears and had been tendered back after his death and after several months subsequent to the application of his widow for payment of policy, and plaintiff having offered the certificate of membership issued to Kalinski upon acceptance of his application, marked

Exhibit E, which was accepted without objection, both parties rested upon the evidence; and counsel for defendant thereupon requested the court to charge the jury as follows: The jury is instructed that the books of account kept by the Syracuse lodge, of which the deceased Achille Kalinski was a member, are competent to be considered by them as evidence with reference to his indebtedness at the date of his death for lodge dues, and that if the jury find from these books of account that he was in arrears, in the absence of proof which opposes or of proof showing payment of these dues, or error in the account, the entries in said accounts are conclusive proof of the amount shown thereby to be due; which charge the court gave as requested, adding thereto the following: 'I charge the jury, as requested by the defendant's counsel, as to the proof of the arrearages due by Mr. Kalinski at the time of his death. The books of defendant are competent proof, and they are uncontradicted, and therefore establish the arrearages as being $12.50.'

And defendant further requested the court to charge the jury as follows: 'If you find that Kalinski was in arrears and indebted to his lodge for dues at the date of his death in an amount equal to one year's dues, you must find as a conclusion from the fact that he had forfeited his membership in the endowment rank, and that the plaintiff is not entitled to recover in this suit.

And the receipt of assessments by the officers of said endowment rank (which it is admitted have been tendered back, as hereinabove set forth) previous thereto, if in ignorance of the fact that he was so in arrears, was not a waiver of such forfeiture.' But the court refused to give the charge as requested, but in lieu thereof charged the jury as follows: 'As to the construction of the meaning as matter of law, of the fundamental law, and of the orders of defendant's organizations, I adopt the views of the board of control of the defendant's orders in case of John A. Manikheim; and I instruct the jury if the jury finds as a fact that the keeper of records and seal
56 of the order to which Mr. Kalinski belonged failed to notify the section of which he was member of the fact that he was in arrears for dues to said lodge, and also that the lodge failed to suspend Mr. Kalinski in accordance with law, and also the section of the endowment rank had received the monthly assessments of said Kalinski up to the date of his death, then the verdict will be for the plaintiff and against the defendant for the sum of three thousand dollars, with interest from judicial demand.'

The views of the board of control referred to in said charge, as well as the instructions of the supreme chancellor to the various grand chancellors and officers and members of the various sections of the endowment rank, is hereto annexed and marked Exhibit D and made part of this bill."

Which refusal of the court to give the instructions requested and giving the foregoing instructions in lieu thereof is alleged as error.

LOCKE, district judge, delivered the opinion of the court:

Under the assignment of error the only questions for us to consider are, first, whether refusing to charge, in effect, that the forfeiture of the membership of Kalinski depended solely upon the fact of his being in arrears to his lodge to the amount of a year's dues was error; or, secondly, whether charging that the fact that the keeper of records and seal of the order to which Mr. Kalinski belonged failed to notify the section of which he was a member of the fact that he was in arrears for dues to said lodge, and that the lodge failed to suspend him in accordance with law, and that the endowment rank had received the monthly assessment up to the time of his death, would bar the forfeiture of his membership was error.

The section of the endowment rank of the order is a separate and distinct organization from the lodge and for insurance pur-
57 poses only. The dues and assessments of each are kept distinct and the non-payment of one does not affect the amount of the other, but it is provided that no one can be a member of a section unless he is a member of a lodge.

There is no question as to the sufficiency and integrity of the original certificate of membership, but it is claimed by plaintiff in error that under the agreement of the insured as found in his application and under the rules of the order he was in arrears to his lodge for an amount equal to one year's dues, and had forfeited his membership in the section and rank and rendered void his endowment certificate.

The penalty of a forfeiture of rights under a contract of indemnity or insurance is not favored in law, and it is only by positive, direct, and unavoidable terms in the agreement that it will be enforced, and especially so in such a case as this, where payment or non-payment of the amount unpaid was a non-essential to the contract of insurance, where it neither increased nor diminished the fund from which the payment of death losses was derived or increased or diminished the risks to which the insured was exposed.

A careful examination of the application of Kalinski for membership shows that the only thing found therein which can be invoked to forfeit his membership is found in the paragraph—

"I hereby agree that I will punctually pay all dues and assessments for which I may become liable, and that I will be governed and this contract shall be controlled by all the laws, rules, and regulations of the order governing this rank now in force or that may hereafter be enacted or submit to the penalties therein contained."

There is no penalty of forfeiture declared in this language,
58 and, although he there promised to pay all dues, unless there is such penalty attached to such non-payment by some other rule or regulation, it cannot be held to ensue. It is claimed that such rule is found in what was at the time art. X, sec. I, and what has since become art. VIII, sec. I of the code of laws, rules, and regulations of the order adopted by the board of control of the

supreme lodge of the order, which is: "When a member of the endowment rank becomes in arrears to his lodge for an amount equal to one year's dues he shall forfeit his membership to the section and said rank and render void his endowment certificate." Upon the binding force of this rule the questions in this case depend. The deceased had bound himself to be governed and stipulated that the contract should be controlled by all the laws, rules, and regulations of the order, and by this measure alone can the rights of his beneficiary be determined.

An examination of the constitution of the order, which must be accepted as the fundamental, organic, and controlling law, provides for the manner of the forfeiture of the rights of members, and in art. XI, sec. I, declares that if one resign "such resignation shall cause a forfeiture of all amounts paid into and all claims upon the endowment rank."

Sec. 2 provides that "Whenever a member of the endowment rank withdraws from his lodge, or whenever his membership therein ceases from any cause other than death, he thereby severs his connection with this rank and forfeits all his right, title, and interest in and to the endowment fund."

And sec. 3 provides for an appeal in case of a suspension of a member to the grand or supreme lodge.

This would certainly seem to provide for the manner in which and by which a member should be held to forfeit his rights of membership, and raise the very serious question whether any rule
59 by which this manner was changed, which declared any other manner of forfeiting such membership, did not infringe upon the constitutional rights of the members, and was therefore null and void. The well-established principle of *expressio unius exclusio alterius est* would seem to apply, and the providing one way of determining forfeiture would preclude another and more stringent; but we do not find that we are compelled to decide such question, as we consider it has already been done by the order itself.

The constitution further provides in the organization of the order for a board of control and states very fully its duties and powers. Art. VII, sec. 5, provides that—

"The board shall have entire charge and full control of the endowment rank, subject to such restrictions as the supreme lodge may from time to time provide. They shall hear and determine all appeals, and their findings shall be final unless reversed by the supreme lodge in session."

SEC. 9. "The board is hereby authorized to enact general laws, rules, and regulations in conformity with this constitution for the sections and the membership of the endowment rank, and alter and amend such general laws, rules, and regulutions when in their judgment the needs of the rank require such action."

In accordance with such provisions the board of control adopted certain general laws, rules, and regulations, and provided in art. III, sec. 5, of the same that the secretary of each section shall keep a financial account with each member, and in January furnish to the master of finance of the several lodges a list of the names and re-

quest such officer to inform him whenever any member of the lodge became in arrears to the lodge of an amount equal to a year's dues; they also provided, as quoted in art. VIII, sec. 1, that when a member becomes in arrears to his lodge he shall forfeit his membership in the section.

60 It was by this board and under the powers thus given that the laws, rules, and regulations by one of which it is claimed the forfeiture took effect in this case were enacted; but it will be seen that their authority to establish rules was limited to those which should be "in conformity with this constitution;" otherwise they had full control of the endowment rank—not only to make laws, but to hear appeals. They not only constituted the chief legislative body, but also the supreme court of the order, whose findings were to be final unless reversed by the supreme lodge in session.

This was the organization and these the established laws of the order. The constitution had provided that when a member withdrew from his lodge or his membership therein ceased from any cause other than death he forfeited his rights, title, and interest to the endowment fund. The board of control had declared that if he was one year in arrears for dues the forfeiture took place. Whether this rule was or was not in conformity with the constitution and how far it was binding was directly submitted to the board of control, sitting as a judicial body, and passed upon.

In addition to the copies of such constitutions, regulations, and by-laws, we find in the record, and made a part of the bill of exceptions by special declaration, a finding and decision of the board of control, as found in vol. 5 of the Journal of the Supreme Lodge of Knights of Pythias for the year 1887–'8, page 4097, in a case presented to that board by the supreme secretary.

61 It is contended by the plaintiffs in error that this exhibit was not offered or received in evidence and is not therefore a fact to be considered and can have no bearing or weight in this case.

We cannot accept these views of this exhibit. It is brought directly into this court by the plaintiffs in error. Its validity is not questioned, nor that it was presented and considered by the court below, and if the substance or matter contained is relevant we consider it too late to object to the manner in which it is presented for consideration.

When we examine the matter of this exhibit we find that it is a decision and ruling of the board of control, to whom the constitution of this order had given entire charge and control of this endowment rank under which this certificate had been given, and who had power to make and who had made all laws, rules, and regulations, and in whom was the power to alter and amend such rules and regulations when in their judgment the needs of the rank required action. Not only was it a decision and ruling of theirs upon a subject of which they had full jurisdiction, but one in which their word became law. The facts also presented by the supreme secretary made it a case in which any ruling established became directly

relevant in the questions herein pending. The question submitted to the board of control, as shown by the record of the journal of the supreme lodge, was:

"Brother John A. Manikheim, a member of sec. No. 63, endowment rank, of Washington, D. C., died on the 11th day of January, 1887. At the time of his death he was in arrears to his lodge for one year's dues, but had paid all of his assessments to his section of the endowment rank."

62 The decision was:

"The board of control after a very careful consideration of the facts in this case decided, in view of the fact that the keeper of records and seal of the lodge to which the late John A. Manikheim belonged had failed to notify the section of which he was a member of the fact that said Brother Manikheim was in arrears for dues to said lodge, and that said lodge had failed to suspend said Manikheim in accordance with the law, and that said section of the endowment rank had received the monthly assessments of said Mani-heim up to the date of his death, the endowment rank is liable for the full amount of the endowments and the supreme secretary is instructed to pay the beneficiaries the amount due."

The case therein presented was the exact case, in point of fact, as shown by the evidence, as the case at bar. The brother of the order was in arrears for one year's dues, the keeper of records and seal of the lodge of which he was a member had failed to notify the section of which he was a member of the fact that he was in arrears for dues, and said lodge had failed to suspend him, and the section of the endowment rank had received the monthly assessments up to the time of his death.

There can be but one conclusion drawn from this decision. The board of control had been, by the case presented by the supreme secretary, brought face to face with their rule providing that simply the being in arrears for a year should forfeit membership as viewed in the light of and compared with the XI art. of the constitution, and the question fairly presented whether a forfeiture of rights in a manner not provided for in the constitution was in conformity with it. Their decision was a construction placed upon art. VIII of the laws which made it in conformity with the constitution and became of equally as binding effect as the previous rule.

That this was so considered by the supreme chancellor of the order is plainly seen by the immediate issue of the in-

63 structions contained in the same exhibit, calling to the attention of the officers and members of the sections the importance and necessity of immediately forwarding information of arrears of dues.

It is true that subsequently to this decision, in the general laws and regulations adopted by the board of control October, 1890, the provisions of the article X, section 1, were continued in article VIII, section 1, only changing the terms of arrears necessary to entail a forfeiture from six months to a year, but this in no way do we consider added to its force. The board of control had already construed the law of article X, section 1, and in effect declared it not in con-

formity with the provisions of the constitution, and the re-enactment of the same with such immaterial change could not do away with the force of the rule of construction given.

We can in no degree accept the position urged by the plaintiff in error that this decision was *res inter alios acta* and of no weight or relevancy in this case.

This case is to be determined by the rules and regulations of the order. The order had in its organization established a board to whom was given an almost unlimited power to establish rules and regulations which should control the relations, rights, and duties of the hundreds of thousands of individual members with the great order and to change and amend them as deemed best, and to hold that such a finding as this was simply to determine an individual case "out of consideration for the beneficiary" and might be
64 changed in the next case from personal motives would show a lack of appreciation of the principles, aims, and objects of the order and the good faith of its board, to which we consider it justly entitled.

We consider that the decision in the Manikheim case was not only not *res inter alios acta*, but was a rule established by the same power and entitled to the same respect as the original article X, sec. 1, and pronounced after more careful consideration than that with which the former was enacted.

As well might it be claimed that the decisions of any supreme judicial tribunal, State or national, establishing a rule of property or of individual rights was *res inter alios acta* and could not be relied upon as of any binding force by those who had subsequently acquired property or claimed rights under identically the same circumstances. In this case even more weight should be given to such decision, for here the board was not only judicial but was also legislative. It could not only say what the law is, but what it should be.

The question then turns upon whether Kalinski was at his death a member of his lodge notwithstanding his being more than one year in arrears.

The constitution and by-laws of Syracuse lodge, of which the deceased was a member, provides, art. XVI, sec. 5, that—

"A member who is in arrears to the amount of one year's dues and has been notified to pay the same shall be suspended by the chancellor commander in open lodge and a record of the same kept in the minutes."

Until suspended in open lodge in accordance with this section, we find no law that would forfeit the membership of
65 Kalinski, although he had been notified of his being in arrears.

But another view of this case may well be considered. In the case of Insurance Co. *v.* Eggleston, 96 U. S., 572, Justice Bradley, in speaking for the court, says:

"Any agreement, declaration, or course of action on the part of an insurance company which leads a party insured honestly to believe that by conforming thereto a forfeiture of his policy will

not be incurred, followed by due conformity on his part, will and ought to estop the company from insisting upon the forfeiture, though it might be claimed under the express letter of the contract."

Here the order the insurance company, in the most public and authoritative manner, had published as a portion of the journal of its supreme lodge, the solemn judgment and decree of its highest legislative and judicial body declaring that a member from whom the monthly assessments had been received and who had not been suspended at the time of his death, although a year's dues in arrears, had not forfeited his membership, but his beneficiary was entitled to his benefit. This publication was made nearly four years before the death of Kalinski, and the suggestion that he may not have known of it cannot for a moment be accepted.

What declaration by an insurance company could be more entitled to respect and confidence, and, if misleading, more liable to mislead? Such a published declaration made by a private or joint stock insurance company would unquestionably prevent the forfeiture of any policy coming within the terms of its provisions. How much more should it have such effect within the limits of an order like this, where it is presumed that such published declarations are for the information and guidance of those whose mutuality of interest is one of the principles of its organization?

66 Considering the decision in the Manikheim case in either way as establishment of a new rule or as the publication of the decision of the board of control, we consider the plaintiff as estopped from pleading a forfeiture, and we find no error in the court below and the judgment is affirmed with costs.

67 United States Circuit Court of Appeals for the Fifth Circuit.

I, J. M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing sixty-six pages, numbered from 1 to 66, inclusive, contain a true, full, and perfect transcript of the record, pleas, process, and proceedings, and of the opinion of the court in the case of The Supreme Lodge Knights of Pythias of the World, plaintiff in error, *versus* Mrs. Eugenia Kalinski, defendant in error, No. 123, November term, 1892, as the same remains upon the files and records of said United States circuit court of appeals, except that in lieu of full copies of Exhibit B^1, Exhibit B^2, and Exhibit C to the bill of exceptions extracts only are given in the foregoing transcripts, the same being done by order of attorneys for plaintiff in error.

Seal United States Circuit Court of Appeals, Fifth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, this 22nd day of August, A. D. 1893.

J. M. McKEE, *Clerk.*

68 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the Unites States circuit court of appeals for the fifth circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said United States circuit court of appeals, before you or some of you, between The Supreme Lodge Knights of Pythias of the World, plaintiff in error, and Mrs. Eugenie Kalinski, defendant in error, No. 123 on the docket of said court, a manifest error hath happened, to the great damage of the said Supreme Lodge Knights of Pythias, plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Supreme Court, together with this writ, so that you have the same at the city of Washington, District of Columbia, within 30 days from the date hereof, in the said United States Supreme Court to be then and there held, and, the record and proceedings aforesaid being inspected, the said United States Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal of the Supreme Court of the United States.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 31st day of July, in the year of our Lord one thousand eight hundred and ninety-three.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
HOWELL E. JACKSON,
Asso. Justice Supreme Court.

69 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Mrs. Eugenia Kalinski, New Orleans, La., Greeting:

You are hereby cited and admonished to be and appear before the United States Supreme Court, at Washington, District of Columbia, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the United States circuit court of appeals for the fifth circuit, wherein The Supreme Lodge Knights of Pythias of the World is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Howell E. Jackson, associate justice of the Supreme Court of the United States, this 31st day of July, in the year of our Lord one thousand eight hundred and ninety-three.

HOWELL E. JACKSON,
Asso. Justice Supreme Court.

70 On this — day of ——, in the year of our Lord one thousand eight hundred and ninety —, personally appeared —— —— before me, the subscriber, —— ——, and makes oath that he delivered a true copy of the within citation to —— ——.

Sworn to and subscribed the —, A. D. 189–.

—— ——.

Service of the within citation accepted for defendant in error.

M. MARKS &
WM. ARMSTRONG,
Att'ys for Def. in Error.

New Orleans, Aug. 3d, '93.

Endorsed on cover: Case No. 15,384. U. S. circuit court of appeals, 5th circuit. Term No., 1000. The Supreme Lodge Knights of Pythias of the World, plaintiff in error, *vs.* Mrs. Eugenie Kalinski. Filed August 29, 1893.

1000

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JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

No. —— of October Term, 1893.

THE SUPREME LODGE, KNIGHTS OF PYTHIAS OF THE WORLD, PLAINTIFFS IN ERROR,

versus

MRS. EUGENIA KALINSKI, DEFENDANT IN ERROR.

MOTION TO DISMISS, OR TO AFFIRM.

BRIEF OF EUGENIA KALINSKI, DEFENDANT IN ERROR.

M. MARKS,
Of Counsel for Defendant in Error.

Supreme Court of the United States.

No. —— of October Term, 1893.

THE SUPREME LODGE, KNIGHTS OF PYTHIAS OF THE WORLD, PLAINTIFFS IN ERROR,

versus

MRS. EUGENIA KALINSKI, DEFENDANT IN ERROR.

MOTION TO DISMISS, OR TO AFFIRM.

BRIEF OF EUGENIA KALINSKI, DEFENDANT IN ERROR.

BRIEF.

The errors complained of by Plaintiffs in Error, as found in the assignment of Error is as follows: That the Court refused to give the charge as requested, and in lieu thereof, charged the jury as follows: "As to the construction of the meaning as matter of law of the fundamental law, and to orders

of Defendant Organization, I adopt the view of the Board of Control of the Defendant Order, in case of John A. Manikheim, and instruct the jury, if the jury finds as a fact that the Keeper of Records and Seal of the Order, to which Mr. Kalinski belonged, failed to notify the section of which he was a member, of the fact that he was in arrears for dues to said Lodge, and also that the Lodge failed to suspend Mr. Kalinski in accordance with law, and also the section of the Endowment Rank had received the monthly assessment of said Kalinski up to the date of his death, then the verdict will be for plaintiff and against defendant for the sum of $3,000 with interest from judicial demand."

The charge was based upon the action of the Board of Control, as approved by the Supreme Lodge of Knights of Pythias, as found in the Record, p. 23, marked "Exhibit D." which case is identical in every respect with the case at bar, and the following decision rendered by the Board of Control, and which decree was approved by the highest authority in the order, which reads as follows. Decision:—"The Board of Control, after a very careful consideration of all the facts in this case, decided in view of the fact that the Keeper of Records and Seal of the Lodge, to which the late John A. Manikheim belonged, failed to notify the section to which he was

a member of the fact that said Brother Manikheim was in arrears for dues to said Lodge, and that said Lodge had failed to suspend said Manikheim in accordance with the law, and that said section of the Endowment Rank had received the monthly assessments of said Manikheim up to the date of his death. The Endowment Rank is liable for the full amount of the Endowment. And the Supreme Secretary is instructed to pay the beneficiary the amount due."

After said decision was rendered, we find orders given to the different Grand Chancellors of the Grand Lodges of the different states, on the 20th of May, 1887, by the Supreme Chancellor, Hon. Howard Douglas, as found on pages 24, 25 and 26 of the Record.

This is the salient point in the Writ of Error, that your Honorable Court is called upon to review and reverse.

ARGUMENT.

We respectfully call your Honors' attention to the fact, that the highest authority in the Order, when the first case presented itself for adjudication, has placed a construction upon the clause enacted by themselves under which the forfeiture of the Endowment policy is sought, which decision is based

upon justice and equity, and which as far as the Order is concerned is binding upon all its members, and as published in their proceedings in Vol. 5, p. 4097, at their session of 1887 and 1888, which has never been repealed by them, and the Circuit Judge in charging the jury, adopted that as good and sound law, and therefore held that it had a right to govern in a case where the same state of facts were shown to exist. The Court simply confirmed the decision rendered by their own tribunal, and under the Writ of Error sued out to the Circuit Court of Appeals, the same was affirmed by said Court as being correct. And it is now sought for the sole purpose of delay by the said Board of Control, to have this Honorable Court pass upon this simple proposition as to whether or not the Board of Control, who decided the Manikheim case, were right or wrong. This Board of Control, with an attorney, all being salaried officers, seeking distinction at the sacrifice of every principle that should govern the Order, who had honored them with their confidence, have thus far prevented the unfortunate widow and orphan of their deceased brother, for two years from collecting the money justly due them, and now seek refuge here in this high tribunal, by the Writ of Error granted them to keep the defendant in Writ, and plaintiff in Cause, from executing the decree of

the Circuit Court, confirmed by the Court of Appeals, in all probability, for the next three years to come.

We must respectfully and earnestly urge that this cause should be dismissed with damages, or failing this, that the judgment of the Circuit Court of Appeals be affirmed with damages and costs.

Respectfully submitted,

M. MARKS,

Of Counsel for Defendant in Error.

APPENDIX.

Opinion Circuit Court of Appeals.—Judge Locke as the organ of the Court.

United States Circuit Court of Appeals, Fifth District, November term, 1892. — The Supreme Lodge, Knights of Pythias of the World, Plaintiff in Error, vs. Mrs. Eugenia Kalinski, Defendant in Error.—No. 123.—Error in the United States Circuit Court, Eastern District of Louisiana.—Before Pardee and McCormick, Circuit Judges, and Locke, District Judge.—This was a suit brought in the circuit court by Eugenia Kalinski, as beneficiary of Achille Kalinski, against the Supreme Lodge, Knights of Pythias, upon a certificate of membership of the Endowment Rank of the Order of Knights of Pythias, certifying that he had received the rank of the order, and in consideration of cer-

tain payments and the performance of certain conditions his wife, the beneficiary, would be paid upon his death $3000. In answer defendant below, plaintiff in error here, set up that one of the conditions of Achille Kalinski's application was that he should keep his lodge dues fully paid, and with that condition he had not complied. That one of the rules of the Endowment Rank was that if "any member of the Endowment Rank becomes in arrears to his lodge for an amount equal to one year's dues, he shall forfeit his membership in the section and said rank and render void his endowment certificate;" that Kalinski, the deceased, at the time of his death, although he had paid the assessments to the Endowment Rank in full, was in arrears to the Syracuse Lodge, of which he was a member, for more than a year's dues, and that he had forfeited his membership, and the certificate was null and void. A trial being had and a verdict found for plaintiff for the full amount claimed, a new trial was granted, which also resulting in a verdict for the plaintiff, a writ of error was sued out in which was assigned as error the refusal of the court to give the charges asked and giving the charge as it was given. These alleged errors and the facts proven in the case are fully set out in the bill of exceptions, which is:

"Be it remembered that at the trial of this cause

before the jury on the 11th of February, 1893, the defendant, in support of its answer and plea, offered in evidence: First, the application of Achille Kalinski for membership in section 363 of the Endowment Rank of the Order of the Knights of Pythias, hereto annexed and marked exhibit A as part of this bill; second, the constitution of the Endowment Rank of Knights of Pythias of the World, including the revised general laws and regulations adopted by the board of control Oct. 24, 1890, marked exhibit B1 and exhibit B2, made part of this bill; third, also the constitution and by-laws of Syracuse Lodge No. 50, Knights of Pythias, located at New Orleans, La., marked exhibit C, and made part hereof; that all of the said documents were received in evidence without objection, and were accepted by the Court as determinative of the rights of the parties in the cause of action herein. And it further appearing to the Court from the books of account kept by the said Syracuse Lodge No. 50 and other evidence, that the said Achille Kalinski was indebted to said lodge, of which he was a member, on the 31st day of March, 1891, and at the date of his death, May 24, 1891, in the sum of $12 50 for dues owing by him to his said lodge, under by-laws, article 4, page 46, and article 13, page 54, of said lodge, which sum was in excess of one year's dues

he was required to pay, as dues; but that he had not been suspended by his lodge for that reason before his death under the provisions of section 5 of article 16 of the constitution of the lodge, and section 3 of article 14 of the by-laws, although he had received notice from the proper officer of the lodge to pay the same, and had been told to pay the same before the next lodge meeting, but that he died before such next meeting without having paid the same. And it further appearing as a fact, not disputed, that the keeper of records and seals of Syracuse Lodge No. 50 had under section 6, article 4, of the constitution of the lodge failed to notify the section of the Endowment Rank to which Kalinski belonged, that he was in arrears; and that the said Syracuse Lodge failed to suspend him on account of arrears, and that the assessments due by Kalinski to the Endowment Rank were received in ignorance of the fact that he was so in arrears and had been tendered back after his death and after several months, subsequent to the application of his widow for payment of policy. And plaintiff having offered the certificate of membership issued to Kalinski upon acceptance of his application, marked exhibit E, which was accepted without objection, both parties rested upon the evidence; and counsel for defendant thereupon requested the Court to charge the jury as follows:

The jury is instructed that the books of account kept by the Syracuse Lodge, of which the deceased, Achille Kalinski, was a member, are competent to be considered by them as evidence with reference to his indebtedness at the date of his death, for lodge dues, and that if the jury find, from these books of account, that he was in arrears, in the absence of proof which opposes or of proof showing payment of these dues, or error in the account, the entries in said accounts are conclusive proof of the amount shown thereby to be due. Which charge the Court gave as requested; adding thereto the following: I charge the jury as requested by the defendant's counsel as to the proof of the arrearages due by Mr. Kalinski at the time of his death. The books of defendant are competent proof, and they are uncontradicted, and, therefore, establish the arrearages as being $12 40."

And defendant further requested the Court to charge the jury as follows:

"If you find that Kalinski was in arrears and indebted to his lodge for dues at the date of his death, in an amount equal to one year's dues, you must find as a conclusion from the fact that he had forfeited his membership in the Endowment Rank, and that the plaintiff is not entitled to recover in this suit."

And the receipt of assessments by the officers of

said Endowment Rank (which it is admitted have been tendered back as herein above set forth) previous hereto, if in ignorance of the fact that he was so in arrears, was not a waiver of such forfeiture. But the Court refused to give the charge as requested, but in lieu thereof, charged the jury as follows:

"As to the construction of the meaning as a matter of law of the fundamental law, and of the orders of defendant's organization, I adopt the views of the board of control of defendant's order, in case of John A. Manikheim, and I instruct the jury, if the jury finds as a fact that the keeper of records and seal of the order to which Mr. Kalinski belonged, failed to notify the section of which he was a member, of the fact that he was in arrears for dues to said lodge, and also that the lodge failed to suspend Mr. Kalinski in accordance with the law; and also the section of the Endowment Rank had received the monthly assessments of said Kalinski up to the date of his death, then the verdict will be for the plaintiff and against the defendant for the sum of $3000, with interest from judical demand."

The views of the board of control, referred to in said charge, as well as the instructions of the Supreme Chancellor to the various Grand Chancellors and officers and members of the various sections of the Endowment Rank, is hereto annexed and

marked exhibit D, and made part of this bill, which refusal of the Court to give the instructions requested, and giving the foregoing instructions in lieu thereof, is alleged as error.

Locke, District Judge, delivered the opinion of the Court.

Under the assignment of error, the only questions for us to consider are, first, whether refusing to charge in effect, that the forfeiture of the membership of Kalinski depended solely upon the fact of his being in arrears to his lodge to the amount of a year's dues was an error; or, secondly, whether charging that the fact that the keeper of records and seal of the order to which Mr. Kalinski belonged failed to notify the section of which he was a member, of the fact that he was in arrears for dues to said lodge, and that the lodge failed to suspend him in accordance with law; and that the Endowment Rank had received the monthly assessment up to the time of his death would bar the forfeiture of his membership, was error.

The section of the Endowment Rank of the Order is a separate and distinct body from the lodge, and for insurance purposes only. The dues and assessments of each are kept distinct, and the non-payment of one does not affect the assessment of the other. But it is provided that no one can become a

member of a section unless he is a member of a lodge.

There is no question as to the sufficiency and integrity of the original certificate of membership, but it is claimed by plaintiff in error that under the agreement of the insured, as found in the application and under the rules of the order he was in arrears to his lodge for an amount equal to one year's dues, and had forfeited his membership in the section and rank, and rendered void his endowment certificate.

The penalty of a forfeiture of rights under a contract of indemnity or insurance is not found in law, and it is only in positive, direct and unavoidable terms in the agreement that it will be enforced, and especially so in such a case as this, where payment or non-payment of the amount unpaid was a non-essential to the contract of insurance, where it neither increased nor diminished the fund from which the payment of death losses was derived, or increased or diminished the risks to which the insured was exposed.

A careful examination of the application of Kalinski for membership shows that the only thing found therein which can be invoked to forfeit his membership is found in the paragraph: "I hereby agree that I will punctually pay all dues and assess-

ments for which I may become liable, and that I will be governed and this contract shall be controlled by all the laws, rules and regulations of the Order governing this Rank now in force, or that may hereafter be enacted, or submitted to the penalty therein contained." There is no penalty of forfeiture declared in this language, and although he promised to pay all dues, unless there is such penalties attached to non-payment by some other rule or regulation, it cannot be held to ensue. It is claimed that such a rule was found in what was at that time article 10, section 1, and what has since become article 8, section 1, of the code of by-laws, rules and regulations of the Order adopted by the board of control of the Supreme Lodge of the Order, which is: "When a member of the Endowment Rank becomes in arrears to his lodge for an amount equal to one year's dues he shall forfeit his membership to the section and said Rank and render void his Endowment certificate." Upon the binding force of this rule the question in this case depends. The deceased had bound himself to be governed and stipulated that the contract should be controlled by all the laws, rules and regulations of the Order, and by this measure alone can the rights of his beneficiary be determined.

An examination of the constitution of the Order,

which must be accepted of fundamental organic and controlling law, provides for the manner of the forfeiture of the rights of members, and in article 11, section 1, declares that if one resign, "such resignation shall cause a forfeiture of all amounts paid into and all claims upon the Endowment Rank."

Section 2 provides that "Whenever a member of the Endowment Rank withdraws from his lodge, or whenever his membership therein ceases, from any cause other than death, he thereby severs his connection with this Rank, and forfeits all his right, title and interest in and to the Endowment fund."

And section 3 provides for an appeal in case of a suspension of a member to the Grand or Supreme Lodge.

This would certainly seem to provide for the manner in which and by which a member should be held to forfeit his rights of membership, and raise the very serious question whether any rule by which this manner was changed which declared any other manner of forfeiting such membership, did not infringe upon the constitutional rights of the members and was therefore null and void. The well established principle of law of *expressio unius exclusio alterius est* would seem to apply, and the providing one way of determining forfeiture would preclude any other and more stringent. But we do not find

that we are compelled to decide such question, as we consider it has already been done by the order itself.

The constitution further provides in the organization of the order for a board of control, and states very fully its duties and powers. Article 7, section 5, provides that "The board shall have entire charge and full control of the Endowment Rank, subject to such restrictions as the Supreme Lodge may from time to time provide. They shall hear and determine all appeals, and their findings shall be final unless reversed by the Supreme Lodge in session." Section 9—"The board is hereby authorized to enact general laws, rules and regulations in conformity with this constitution for the sections and the membership of the Endowment Rank, and alter and amend such general laws, rules and regulations when, in their judgment, the needs of the rank require such action."

In accordance with such provisions, the board of control adopted general laws, rules and regulations, and provided in article 3, section 5, of the same, that the secretary of each section shall keep a financial account with each member and in January furnish to the master of finance of the several lodges a list of the names and request such officer to inform him whenever any member of the lodge became in

case presented by the Supreme Secretary, brought face to face with their rule providing that simply the being in arrears for a year should forfeit membership, as viewed in the light of, and compared with, the eleventh article of the constitution and the question fairly presented, whether such a forfeiture of rights in a manner not provided for in the constitution, was in conformity to it. Their decision was a construction placed upon article 8 of the laws, which made it in conformity with the constitution and became of equally as binding effect as the previous rule.

In addition to the copies of such constitutions, regulations and by-laws, we find in the record and made a part of the bill of exceptions by special declaration, a finding and decision of the board of control, as found in the volume 5, of the Journal of the Supreme Lodge of the Knights of Pythias, for the years 1887-8, page 4097, in a case presented to that board by the Supreme Secretary.

It is contended by the plaintiffs in error that this exhibit was not offered or received in evidence and is not therefore a fact to be considered, and can have no bearing or weight in this case.

We cannot accept these views of this exhibit. It is brought directly into this Court by the plaintiffs in error; its validity is not questioned nor that it

was presented and considered by the Court below, and if the substance or matter contained is relevant we consider it too late to object to the manner in which it was presented for consideration.

When we examine the matter of this exhibit we find that it is a decision and ruling of the board of control, to whom the constitution of this Order had given entire charge and control of this Endowment Rank, under which the certificate had been given; and who had power to make, and who had made, all laws, rules and regulations and in whom was the power to alter and amend such rules and regulations when in their judgment the needs of the Rank required action. Not only was it a decision and ruling of theirs upon a subject of which they had full jurisdiction, but one in which their word became law. The facts also presented by the Supreme Secretary made it a case in which any ruling established became directly relevant in the question herein pending. The question submitted to the board of control, as shown by the record of the journal of the Supreme Lodge, was:

"Brother John A. Manikheim, a member of Section No. 63, Endowment Rank, of Washington, D. C., died on the 11th day of January, 1887. At the time of his death he was in arrears to his lodge for

one year's dues, but had paid all of his assessments to his section of the Endowment Rank."

The decision was:

"The board of control, after a very careful consideration of the facts in this case, decided, in view of the fact that the keeper of records and seal of the lodge to which the late John A. Manikheim belonged, had failed to notify the section of which he was a member of the fact that said Brother Manikheim was in arrears for dues to said lodge, and that said lodge had failed to suspend said Manikheim in accordance with the law, and that said section of the Endowment Rank had received the monthly assessments of said Manikheim up to the date of his death, the Endowment Rank is liable for the full amount of the endowments, and the Supreme Secretary is instructed to pay the beneficiaries the amount due."

That this was so considered by the Supreme Chancellor of the Order is plainly seen in the immediate issue of the instructions contained in the same exhibit, calling to the attention of the officers and members of the sections, the importance and necessity of immediately forwarding information of arrears and dues.

It is true that subsequent to this decision, in the general laws and regulations adopted by the board

of control, October, 1890, the provisions of the article 10, section 1, were continued in article 8, section —, only changing the term of arrears necessary to entail a forfeiture from six months to a year, but this in no way do we consider added to its force. The board of control had already construed the law of article 10, section 1, and in effect declared it not in conflict with the provisions of the constitution and a re-enactment of the same with such immaterial change could not do away with the force of the rule of construction given.

We can, in no degree, accept the position urged by the plaintiff in error that this decision was *res inter alios acta* and of no weight or relevancy in the case.

This case is to be determined by the rules and regulations of the Order. The Order had in its organization established a board to whom was given an almost unlimited power to establish rules and regulations which should control the relations, rights and duties of the hundreds of thousands of individual members with the great Order and to change and amend them as deemed best, and to hold that such a finding as this was simply to determine an individual case "out of consideration for the beneficiary" and might be changed in the next case from personal motives, would show a lack of appreciation

of the principles, aims, and objects of the Order, and the good faith of its board, to which we consider it justly entitled.

We consider that the decision in the Manikheim case was not only *res inter alios acta*, but was a rule established by the same power and entitled to the same respect as the original article 6, section 1, and pronounced after more careful consideration than that was enacted:

The question then turns upon whether Kalinski was at his death a member of his lodge, notwithstanding his being more than one year's dues in arrears.

The constitution and by-laws of Syracuse Lodge, of which the deceased was a member, provides, article 16, section 5, that "a member who is in arrears to the amount of one year's dues, and has been notified to pay the same, shall be suspended by the Chancellor Commander in open lodge, and a record of the same kept in the minutes."

As well might be claimed that the decisions of any supreme judicial tribunal, whether state or national, establishing a rule of property or of individual rights, was *res inter alios acta*, and could not be relied upon as of any binding force by those who had subsequently acquired property or claimed rights under identically the same circumstances.

In this case even more weight should be given to such decision, for here the board was not only judicial, but was also legislative. It could not only say what the law was, but what it should be.

Until suspended in open lodge, in accordance with section —, we find no law that would forfeit the membership of Kalinski, although he had been notified of his being in arrears.

But another view of this case may well be considered.

In the case of Insurance Company vs. Eggleston, 96 U. S. 572, Justice Bradley, in speaking for the Court, says:

"Any agreement, declaration, or course of action on the part of an insurance company which leads a party insured honestly to believe that by conforming thereto a forfeiture of his policy will not be incurred, followed by due conformity on his part, will and ought to stop the company from insisting upon the forfeiture, though it might be claimed under the express letter of the contract."

Here the Order, the insurance company, in the most public and authoritative manner, had published a portion of the journal of its Supreme Lodge, the solemn judgment and decree of its highest legislative and judicial body, declaring that a member from whom the monthly assessments had been received and who had not been suspended at the time

of his death, although a year's dues in arrears, had not forfeited his membership, but his beneficiary was entitled to his benefit. This publication was made nearly four years before the death of Kalinski, and the suggestion that he may not have known of it cannot for a moment be accepted.

What declaration by an insurance company could be more entitled to respect and confidence, and if misleading, more liable to mislead? Such a published declaration made by a private, or joint stock insurance company, would unquestionably prevent tha forfeiture of any policy coming within the terms of its provisions. How much more should it have such effect within the limits of an Order like this, where it is presumed that such published declarations are for the information and guidance of those whose mutuality of interest is one of the principles of its organization. Considering the decision in the Manikheim case in either way as the establishment of a new rule, or as the publication of the decision of the board of control, we consider the plaintiff as estopped from pleading a forfeiture and we find no error in the Court below, and the judgment is affirmed, with costs.

COPY.

Assignment of Errors by Plaintiff in Writ.

Counsel for defendant in the Circuit Court having

upon the evidence adduced in the cause requested the Court to charge as follows:

1. The jury is instructed that the books of account kept by Syracuse Lodge, of which the deceased, Achille Kalinski, was a member, are competent to be considered by them as evidence with reference to his indebtedness at the date of his death for lodge dues, and if the jury find from these books of account that he was in arrears, in the absence of proof which opposes or of proof showing payment of these dues, or error in the account the entries in said account are conclusive proof of the amount shown thereby to be due, which charge the Court gave as requested, but added thereto the following: "I charge the jury as requested by defendant's counsel as to the proof of the arrearages due by Mr. Kalinski at the time of his death. The books of defendant are competent proof, and they are uncontradicted, and therefore established the arrearages as being $12.50."

2. And defendant thereupon further requested the Court to charge the jury as follows: "If you find that Kalinski was in arrears and indebted to his lodge for dues at the date of his death, in an amount equal to one year's dues, you must find as a conclusion from the fact that he had forfeited his membership in the Endowment Rank, and that the plaintiff is not entitled to recover in this suit.

And the receipt of assessments by the officers of said Endowment Rank (which, it is admitted, have been tendered back as herein above set forth) previous thereto, if in ignorance of the fact that he was so in arrears, was not a waiver of such forfeiture."

But the Court refused to give the charge as requested, but in lieu thereof, charged the jury as follows:

"As to the construction of the meaning as matter of law, of the fundamental law, and of orders of defendant's organization, I adopt the views of the board of control of the defendant's Order in case of John A. Manikheim; and I instruct the jury, if the jury finds as a fact, that the keeper of records and seal of the Order to which Mr. Kalinski belonged failed to notify the section of which he was a member of the fact that he was in arrears for dues to said lodge, and also that the lodge failed to suspend Mr. Kalinski in accordance with law; and also the section of the Endowment Rank had received the monthly assessments of said Kalinski up to the date of his death, then the verdict will be for the plaintiff and against the defendant for the sum of $3000 with interest from judicial demand."

The Circuit Court having charged the jury as firstly requested, it was error to refuse the second charge asked for by defendant's counsel, and error to give the charge above set forth in lieu thereof; and it was error in the United States Circuit Court of Appeals to affirm the ruling of said Court in that respect.

2. The said Circuit Court of Appeals erred in holding that there could be no forfeiture of Kalinski's membership and certificate in the Endowment Rank of the Order on account of the matter set up in defendant's plea, and under the proofs by reason of the constitution of the Order.

3. The said Circuit Court of Appeals erred in holding that article 8, section 1, of the laws, rules and regulations of the Endowment Rank, which reads as follows, "When a member of the Endowment Rank becomes in arrears to his lodge for an amount equal to one year's dues, he shall forfeit his membership in the section of said rank, and render void his endowment certificate," is in violation of the constitution of the Rank and Order, and therefore void.

4. The Circuit Court of Appeals erred in holding that Kalinski must have been suspended or dismissed from his lodge before a forfeiture of his certificate in the endowment rank could accrue.

5. It was error in the said Circuit Court of Appeals to adopt the decision of the board of control in the Manikheim case as the law of this case.

6. It was error not to reverse the judgment of the Circuit Court and direct a new trial.

C. S. RICE,
WM. GRANT,
J. ZACH. SPEARING,
Attorneys for Plaintiffs.

Office Supreme Court U. S.
FILED.
DEC 8 1893
JAMES H. McKENNEY,
CLERK.

UNITED STATES SUPREME COURT.

OCTOBER TERM, 1893.

No. 1000.

THE SUPREME LODGE KNIGHTS OF PYTHIAS OF THE WORLD,

Plaintiff in Error,

versus

MRS. EUGENIA KALINSKI,

Defendant in Error.

PLAINTIFF'S BRIEF ON MOTION OF DEFENDANT TO DISMISS WRIT OF ERROR AND AFFIRM THE JUDGMENT OF THE CIRCUIT COURT OF APPEALS.

STATEMENT.

Suit was brought by defendant in error against plaintiff in error in the Civil District Court for the parish of Orleans (a State court) to recover the sum of three thousand dollars, alleged to be due on a beneficial certificate of insurance in the order of the Supreme Lodge Knights of Pythias of the World.

The defendant in that suit, plaintiff here, applied by petition in the State court, and obtained thereon an order

removing the cause to the Circuit Court of the United States for the Eastern District of Louisiana (R., p. 1).

The petition filed in the State court described the plaintiff as a resident of the parish of Orleans, and the defendant as a corporation "incorporated under the act of Congress approved May 5, 1890, domiciled in Washington, D. C., but doing business in the State of Louisiana and parish of Orleans," etc.

The petition for removal alleged the defendant to be a corporation, other than a banking corporation, created by and organized under and by virtue of said act of Congress; and alleged for the purposes of removal that the suit arose under the laws of the United States (R., p. 3).

A motion was made by the plaintiff to remand the cause to the State court for want of jurisdiction in the Circuit Court, which was denied (R., p. 8).

Trial was then had in the Circuit Court, which resulted in a verdict and judgment in favor of the plaintiff. This judgment was affirmed in the Circuit Court of Appeals, and the case has been brought here by the Supreme Lodge on a writ of error.

ARGUMENT.

I.

The motion to dismiss the writ of error here suggests that the judgment of the Circuit Court of Appeals is final, and that this court is, therefore, without jurisdiction to review the case under Section 5 of the Act of March 3, 1891; that the cause does not present any issue of special importance, and the writ of error was taken for delay; and that for these reasons the writ of error ought to be dismissed and the judgment of the Circuit Court of Appeals affirmed, with damages.

The motion assumes that the writ of error was sued out under Sec. 5 of said act, which is not the case. The

record, however, shows that it was allowed under Sec. 6 to review a judgment of the Circuit Court in a case in which the jurisdiction of the Circuit Court did not "depend entirely upon the opposite parties to the case, "or controversy, being aliens and citizens of the United "States, or citizens of different States," where the judgment is not made final by the act. It is a case, therefore, in which jurisdiction to review is vested in this court by the last clause of Sec. 6.

We agree with counsel for defendant that this court is without jurisdiction to review a judgment of the Circuit Court of Appeals, if a writ of error had been allowed under Sec. 5 of the act. There is no issue involved under that section which authorizes a writ of error direct to the Circuit Court. The jurisdictional issue originally raised by the motion to remand was decided by the Circuit Court, adversely, it is true, to the contentions of the plaintiff below; but she afterward prosecuted her suit to judgment in that court and has asked for its affirmance in the Circuit Court of Appeals, and prays for its affirmance here, also.

If final judgment had been rendered against the defendant in error, by the Circuit Court, she might, no doubt, have had the jurisdictional question reviewed here under Sec. 5, but by acquiescing in the judgment in her favor, and asking its affirmance in the Circuit Court of Appeals, she has clearly waived any error in the decision on her motion to remand the case to the State court.

Besides this, she has suffered no injury by a judgment in her favor, of which she has the right to complain.

Greenleaf's Lessee vs. Birth, 5 Peters, 132.

Randon vs. Toby, 11 H. 493.

Whether plaintiff in error, after asserting and constantly affirming the jurisdiction of the Circuit Court, might have brought the question here for review, if he had desired to

do so after judgment was rendered against him, seems to us extremely doubtful.

However this may be, plaintiff in error elected to waive that issue and went to the Circuit Court of Appeals upon the whole case, under the authority of McLish vs. Roff, 141 U. S. 661. No jurisdictional question has been certified to this court, nor has the plaintiff assigned the ruling of the Circuit Court on the motion to remand, as error.

The whole case is now here for determination on the merits, so far as there is any dispute between the parties.

We do not deny the right of this court to examine the record and determine for itself whether the Circuit Court acquired jurisdiction of the case by the removal proceedings. But that question does not go to the jurisdiction of this court to review the case under the sixth section of the act.

The removal was properly maintained by the Circuit Court upon the authority of the Pacific Railway cases, 115 U. S., p. 1.

The plaintiff was organized under a general law of the United States (16th Statutes 96), authorizing the formation of corporations in the District of Columbia for charitable, religious and business purposes, other than banking; and it has not been shown by the defendant that its status for jurisdictional purposes differs in any respect from a railway company created by or under the authority of an act of Congress.

II.

While the jurisdiction of this court to review the decision of the Circuit Court of Appeals under Sec. 6 of the Act of 1891 seems perfectly clear, it is a question that requires the most serious consideration, and is not, by any means, so frivolous as to warrant a dismissal of the writ of error from an inspection of the record, without argument, under Rule VI; and the errors assigned, as the court will

see upon inspection of the record, and the lengthy argument contained in defendant's brief, are too serious to justify the assertion that the writ of error was taken for delay merely. The plaintiff has we submit, a right to be heard by argument before the court on the merits of the controversy.

Plaintiff therefore prays that the motion to dismiss be denied and that the case be ordered to stand for argument when reached under the call.

J. D. ROUSE,
WM. GRANT,
Attorneys for Plaintiffs in Error.

Office Supreme Court U.S.
APR 30 1896
JAMES H. MCKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 268.

SUPREME LODGE KNIGHTS OF PYTHIAS OF THE WORLD, PLAINTIFF IN ERROR,

versus

MRS. EUGENIE KALINSKI, DEFENDANT IN ERROR.

C. S. RICE,
ROUSE & GRANT,
J. ZACH. SPEARING,
Attorneys for Plaintiff in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 268.

SUPREME LODGE KNIGHTS OF PYTHIAS OF THE WORLD, PLAINTIFF IN ERROR,

versus

MRS. EUGENIE KALINSKI, DEFENDANT IN ERROR.

STATEMENT.

The Supreme Lodge Knights of Pythias was incorporated under the act of Congress of May 5, 1870, authorizing the formation of corporations in the District of Columbia for charitable, religious, and business purposes.

16 Statute, p. 96.

It established an order, the members of which are associated together for mutual protection and certain charitable objects. For the purpose of extending its benefits, the organization of subordinate lodges was provided for and a constitution and laws were enacted for their government. They prescribe the mode of organization, the qualifications of members, and for a revenue and define the objects for which it may be disbursed.

Record, Exhibit C, pp. 28 to 32.

Syracuse Lode, No. 50, of which Achille Kalinski was a member, was organized under this constitution.

Exhibit C, *supra*.

The Supreme Lodge, under its general powers, created an Endowment Rank within the order, dividing it into sections, and prescribing a constitution, and general laws and regulations for their government.

Exhibits B 1, B 2, Record, pp. 26, 27.

This endowment branch of the order is solely subject to the jurisdiction of the Supreme Lodge, and is a distinct and separate organization from the subordinate lodges, which are *not* subject directly to the Supreme Lodge but to the *Grand* Lodge of the State in which it is situated, each section of the Endowment Rank having a separate constitution, and being controlled by officers elected by its members. It is, in fact, an insurance department within the order, conducted in the same manner as any ordinary mutual assessment life insurance association. It is connected with the general order in two respects only; each member of the rank must be a Knight of Pythias in good standing, necessarily of some subordinate lodge, and not indebted to his subordinate lodge for one year's dues or more, and the sections of the rank are under the administration of a board of control of the rank, which is itself subject to the supervising jurisdiction of the Supreme Lodge of the order.

Achille Kalinski was a member of Syracuse Lodge, No. 50, of the order, in good standing when he was admitted, July 11, 1887, as a member of section 363 of the Endowment Rank. The annual dues of the lodge were $10 and they remained the same to the date of his death.

See By-Laws, pp. 29 to 32.

These dues, with some special assessments provided for, constitute the funds of the lodge with which to pay certain

benefits to members in distress, etc., but with this the Endowment Rank has no concern.

In his application for membership in the Endowment Rank the following stipulation was made by Kalinski:

"The undersigned is desirous of becoming a member of "section No. 363 of the Endowment Rank of the order of "Knights of Pythias. *This application will become part of the "contract if accepted.*" (Italics ours.)

* * * * * * *

"I hereby agree that I will punctually pay all dues and "assessments for which I may become liable, and that I "will be governed by all the laws, rules, and regulations of "the order governing this rank now in force or that may "hereafter be enacted, or submit to the penalties therein "contained." (Record, pp. 20 and 22.)

The certificate of membership issued upon acceptance of the application also provides that this stipulation is a part of the contract of insurance. (Record, p. 6.)

Kalinski had paid all assessments made against him for death losses in the Endowment Rank at the date of his decease, but was in arrears to his lodge for the sum of $12.50, an amount equal to and *in excess* of one year's dues.

The defendant (plaintiff in error) claims and has pleaded that by reason of being so in arrears he had, under the following law of the order and of the Endowment Rank, forfeited all rights as a member prior to his death, May 26, 1891.

"ARTICLE VIII.

"*Members in Arrears for Lodge Dues.*

"SECTION 1. When a member of the Endowment Rank be- "comes in arrears to his lodge for an amount equal to one "year's dues he shall forfeit his membership in the section "and said rank and render void his endowment certificate."

Record, p. 28.

Though Kalinski paid assessments against him for death losses in the Endowment Rank after he had forfeited his certificate, they were received by the defendant in ignorance of the fact that the forfeiture had been incurred, and the amount so received has been tendered back.

At the trial it appeared from the evidence, which is not disputed, that Kalinski was indebted for dues to Syracuse Lodge, No. 50, of which he was a member, on the 31st day of March, 1891, and at the date of his death, May 26, 1891, in the sum of $12.50, which was in excess of one year's dues, but that he had not been suspended, though he was liable to suspension for that reason under section 5, article 16, of the constitution, and section 3, article 14, of the by-laws of Syracuse Lodge.

It also appeared as a conceded fact that the assessments paid by Kalinski to the Endowment Rank, after he became in arrears, were received in ignorance of the fact that a forfeiture had accrued and had been tendered back to Mrs. Kalinski.

It further appeared that Kalinski had received notice from the proper officer of his lodge to pay his dues prior to his death, and had been told to pay the same before the next lodge meeting, but that he died before such next meeting without having paid them; and it further appeared that the keeper of the records and seal of Syracuse Lodge had not notified the section of the Endowment Rank of which Kalinski was a member that he was in arrears under section 6, article 4, of the constitution.

In this conceded state of the case the court charged the jury that the books of Syracuse Lodge were competent evidence, and, being uncontradicted, they established the arrearages due by Mr. Kalinski at the date of his death as being $12.50. Thereupon counsel for defendant requested the court to further charge that "If you find that Kalinski was "in arrears and indebted to his lodge for dues at the date of "his death in an amount equal to one year's dues, you must

find, as a conclusion from that fact, that he had forfeited "his membership in the Endowment Rank, and that the "plaintiff is not entitled to recover in this suit. And the "receipt of assessments by the officers of said Endowment "Rank (which, it is admitted, have been tendered back) "previous thereto, if in ignorance of the fact that he was so "in arrears, was not a waiver of such forfeiture."

But the court refused to give the charge as requested, and in lieu thereof charged the jury as follows: "As to "the construction of the meaning, as matter of law, of the "fundamental law and the orders of defendant's organiza- "tion, I adopt the views of the board of control of the de- "fendant's order in case of John A. Manikheim, and I in- "struct the jury, if the jury find as facts that the keeper of "records and seal of the lodge to which Mr. Kalinski be- "longed failed to notify the section (of the Endowment Rank) "of which he was a member of the fact that he was in ar- "rears for dues to said lodge, and also that the lodge failed "to suspend Mr. Kalinski, in accordance with law, and also "that the section of the Endowment Rank had received the "monthly assessments of said Kalinski up to the date of "his death, then the verdict will be for the plaintiff and "against the defendant for the sum of three thousand "dollars, with interest from judicial demand."

To the refusal of the court to give the last instruction asked, and the giving of the one in lieu thereof defendant duly excepted. (Record, p. 17.)

This was assigned as error. (Record, pp. 17 to 19.)

Upon the trial of the writ of error in the Circuit Court of Appeals for the fifth circuit that court affirmed the judgment of the circuit court (opinion, pp. 47 to 55), and thereupon this writ of error was taken and the following assignment made (Record, pp. 44, 46):

Though Kalinski paid assessments against him for death losses in the Endowment Rank after he had forfeited his certificate, they were received by the defendant in ignorance of the fact that the forfeiture had been incurred, and the amount so received has been tendered back.

At the trial it appeared from the evidence, which is not disputed, that Kalinski was indebted for dues to Syracuse Lodge, No. 50, of which he was a member, on the 31st day of March, 1891, and at the date of his death, May 26, 1891, in the sum of $12.50, which was in excess of one year's dues, but that he had not been suspended, though he was liable to suspension for that reason under section 5, article 16, of the constitution, and section 3, article 14, of the by-laws of Syracuse Lodge.

It also appeared as a conceded fact that the assessments paid by Kalinski to the Endowment Rank, after he became in arrears, were received in ignorance of the fact that a forfeiture had accrued and had been tendered back to Mrs. Kalinski.

It further appeared that Kalinski had received notice from the proper officer of his lodge to pay his dues prior to his death, and had been told to pay the same before the next lodge meeting, but that he died before such next meeting without having paid them; and it further appeared that the keeper of the records and seal of Syracuse Lodge had not notified the section of the Endowment Rank of which Kalinski was a member that he was in arrears under section 6, article 4, of the constitution.

In this conceded state of the case the court charged the jury that the books of Syracuse Lodge were competent evidence, and, being uncontradicted, they established the arrearages due by Mr. Kalinski at the date of his death as being $12.50. Thereupon counsel for defendant requested the court to further charge that "If you find that Kalinski was "in arrears and indebted to his lodge for dues at the date of "his death in an amount equal to one year's dues, you must

find, as a conclusion from that fact, that he had forfeited "his membership in the Endowment Rank, and that the "plaintiff is not entitled to recover in this suit. And the "receipt of assessments by the officers of said Endowment "Rank (which, it is admitted, have been tendered back) "previous thereto, if in ignorance of the fact that he was so "in arrears, was not a waiver of such forfeiture."

But the court refused to give the charge as requested, and in lieu thereof charged the jury as follows: "As to "the construction of the meaning, as matter of law, of the "fundamental law and the orders of defendant's organiza- "tion, I adopt the views of the board of control of the de- "fendant's order in case of John A. Manikheim, and I in- "struct the jury, if the jury find as facts that the keeper of "records and seal of the lodge to which Mr. Kalinski be- "longed failed to notify the section (of the Endowment Rank) "of which he was a member of the fact that he was in ar- "rears for dues to said lodge, and also that the lodge failed "to suspend Mr. Kalinski, in accordance with law, and also "that the section of the Endowment Rank had received the "monthly assessments of said Kalinski up to the date of "his death, then the verdict will be for the plaintiff and "against the defendant for the sum of three thousand "dollars, with interest from judicial demand."

To the refusal of the court to give the last instruction asked, and the giving of the one in lieu thereof defendant duly excepted. (Record, p. 17.)

This was assigned as error. (Record, pp. 17 to 19.)

Upon the trial of the writ of error in the Circuit Court of Appeals for the fifth circuit that court affirmed the judgment of the circuit court (opinion, pp. 47 to 55), and thereupon this writ of error was taken and the following assignment made (Record, pp. 44, 46):

ASSIGNMENT OF ERRORS.

1st. Counsel for defendant in the circuit court having, upon the evidence adduced in the cause, requested the court to charge as follows: 1st. "The jury is instructed that the books of account kept by Syracuse Lodge, of which the deceased, Achille Kalinski, was a member, are competent to be considered by them as evidence with reference to his indebtedness at the date of his death for lodge dues, and if the jury find from the books of account that he was in arrears, in the absence of proof which opposes or of proof showing payment of these dues, or error in the account, the entries in said accounts are conclusive proof of the amount shown thereby to be due;" which charge the court gave as requested, but added thereto the following: "I charge the jury, as requested by defendant's counsel, as to the proof of the arrearages due by Mr. Kalinski at the time of his death. The books of defendant are competent proof, and they are uncontradicted, and therefore establish the arrearages as being $12.50."

2d. And the defendant thereupon further requested the court to charge the jury as follows: "If you find that Kalinski was in arrears and indebted to his lodge for dues at the date of his death in an amount equal to one year's dues, you must find as a conclusion from the fact that he had forfeited his membership in the Endowment Rank, and that the plaintiff is not entitled to recover in this suit, and the receipt of assessments by the officers of said Endowment Rank (which it is admitted have been tendered back, as hereinabove set forth) previous thereto, if in ignorance of the fact that he was so in arrears, was not a waiver of such forfeiture;" but the court refused to give the charge as requested, but in lieu thereof charged the jury as follows: "As to the construction of the meaning, as matter of law, of the

fundamental law and of the orders of defendant's organization, I adopt the views of the board of control of the defendant's order in case of John A. Manikheim, and I instruct the jury, if the jury finds as a fact that the keeper of records and seal of the order to which Mr. Kalinski belonged failed to notify the section of which he was member of the fact that he was in arrears for dues to said lodge, and also that the lodge failed to suspend Mr. Kalinski in accordance with law, and also the section of the Endowment Rank had received the monthly assessments of said Kalinski up to the date of his death, then the verdict will be for the plaintiff and against the defendant for the sum of three thousand dollars, with interest from judicial demand."

The circuit court having charged the jury as firstly requested, it was error to refuse the second charge asked for by defendant's counsel, and error to give the charge above set forth in lieu thereof, and it was error in the United States circuit court of appeals to affirm the ruling of said court in that respect.

2d. The said circuit court of appeals erred in holding that there could be no forfeiture of Kalinski's membership and certificate in the Endowment Rank of the order on account of the matters set up in defendant's plea and under the proofs by reason of the constitution of the order.

3d. The said circuit court of appeals erred in holding that article 8, section 1, of the Laws, Rules, and Regulations of the Endowment Rank, which reads as follows: "When a member of the Endowment Rank becomes in arrears to his lodge for an amount equal to one year's dues he shall forfeit his membership in the section and said rank and render void his endowment certificate," is in violation of the constitution of the rank and order and therefore void.

4th. The circuit court of appeals erred in holding that Kalinski must have been suspended or dismissed from his

lodge before a forfeiture of his certificate in the Endowment Rank could accrue.

5th. It was error in the said circuit court of appeals to adopt the decision of the board of control in the Manikheim case as the law of this case.

6th. It was error not to reverse the judgment of the circuit court and direct a new trial.

ARGUMENT.

I.

It was a plain condition of the contract of insurance between Kalinski and the Supreme Lodge Knights of Pythias that he should forfeit his membership and all benefits in the Endowment Rank of the order whenever he became in arrears to his lodge in an amount equal to one year's dues. That he was so in arrears at the date of his death is not disputed, and the jury was properly so instructed. It follows that the court ought to have further instructed the jury that Kalinski had forfeited all benefits as a member of the Endowment Rank under the terms of his contract prior to his death. This forfeiture was not waived by the subsequent receipt of assessments, for in all such cases it is essential that the insurance company should have had knowledge of the facts upon which it is based before it can be held to have waived the forfeiture by receiving premiums.

Insurance Company *vs.* Wolff, 95 U. S., 327.

Bennecke *vs.* Insurance Company, 105 U. S., 355.

Bacon Benef. Soc. sec. 423, 431, 431a

But it is claimed that a forfeiture did not accrue in this case, or that it was waived, because Kalinski was not suspended by Syracuse Lodge for being in arrears for dues, and because the fact of his being in arrears was not notified by the keeper of the seal of the lodge to the Endowment Rank.

The first proposition is based on section 3, article 14, of the constitution of the *subordinate lodge* (Record, p. 32), which reads as follows:

"A Knight who is one year in arrears for dues, and after "having been previously duly notified of said arrears and "neglecting to pay the same, shall be suspended by the "chancellor commander in open lodge and a record of the "same kept in the minutes."

The second alternative proposition is based on section 6 of article 4 of the constitution of the *lodge*, which reads as follows:

"The master of finance shall furnish the keeper of records "and seal with the amount of receipts itemized previous "to the close of each meeting; at the end of each semi-annual "term a list of all past chancellors not entitled to admission "to the Grand Lodge, and such other information as the "lodge shall require.

"He shall also furnish to the secretary and treasurer of "any section of the Endowment Rank to which his lodge is "tributary, such information concerning the standing of "members as he may from time to time require." (Record, p. 30.)

It will be observed that these are merely the laws of the subordinate *lodge* adopted for the internal regulation of *its* affairs, which form no part of the laws and rules of the Endowment Rank, nor do they enter into the contract of insurance between the members of that rank and the Supreme Lodge Knights of Pythias, except in this particular, that the contract provides that the insurance shall be forfeited in case the insured shall become in arrears to his lodge for one year's dues. The forfeiture is accomplished by the mere occurrence of this event without requiring the suspension of the member by his lodge or the giving of notice by

the master of finance to the Endowment Rank that he is in arrears or that he has been suspended.

It is a common rule that where failure to pay premiums upon a particular day works a forfeiture of the policy the condition is self-operative, requiring no notice to call it into effect. Thompson *vs.* Insurance Company, 104 U. S., 252. Bacon, Ben. 431-431 a

The condition was so written in the contract because the Endowment Rank, the insurer, has no control over the actions of the subordinate lodge in the matter of the suspension of its members, nor, indeed, in any other respect, the subordinate lodge being under the control of the *Grand* Lodge. Whether it was in the power of the lodge to refuse to suspend a member, though in arrears for dues, and to grant him time for their payment, does not affect the question, because Kalinski was nevertheless in *arrears*, notwithstanding its disregard of the laws of its organization in these respects.

II.

The instruction asked for by defendant and refused would no doubt have been given in the Circuit Court but for the views taken by the judge of the decision of the Supreme Chancellor of the order in the case of John A. Manikheim, affirmed by the Supreme Lodge in 1887–'88.

Though this decision was not offered or received in evidence, it was adopted as a *legal rule of construction* applicable to the contract. It is *not*, therefore, a *fact* to be considered in the case as matter of estoppel, and it does not cure any error of law in the charge of the court. The correctness of the charge on the point in issue must be tested by the rules of law applicable to the question without reference to the decision which the court has adopted as its guide. This being the case, it was clearly error on the part of the court to give an instruction which, in effect, eliminated the forfeiting conditions written in the contract.

But, if this decision had been admitted in evidence, the plaintiff below would have fared no better under the law.

The decision in the Manikheim case is *res inter alios acta.* It only establishes the law of that particular case and construes the right of the parties under the special contract with Manikheim, which was the subject of dispute. But as the terms of such contract and the facts involved are not disclosed, it cannot be known upon what the decision was based.

Again, did the Supreme Lodge intend to make a rule of construction for all time and for all contracts, or did it decide that particular case merely on its own equities and waive the forfeiture in that instance out of consideration for the beneficiary? Certainly the board of control simply found that the Endowment Rank was liable in that particular case.

The circular letters of instruction written subsequent to the decision, *requesting* the various grand chancellors to direct the respective masters of finance of the various subordinate lodges within their jurisdiction to notify the secretaries of the sections of the Endowment Rank whenever a member shall become in arrears to his lodge, seem to have been issued for the purpose of obtaining data upon which the conditions of the outstanding contracts might be more certainly enforced, rather than to suspend the forfeiture, as was assumed by the judge in his instructions to the jury.

See circular, Record, p. 33.

We give the same construction to the letter of the Supreme Chancellor directed to the secretaries of the sections of the Endowment Rank.

Record, p. 34.

The effect of these letters is to emphasize the right to enforce forfeitures by requiring lodges to furnish reports upon which the insurer might act, and thus avoid the re-

currence of the state of facts found to exist in the Manikheim case. Certainly no change was made in the constitution of the Endowment Rank which imposes a forfeiture for the non-payment of lodge dues. No notice was required to be given the insured by the Endowment Rank, either that he had become in arrears or that a forfeiture would be enforced on that account. They left the constitution and laws of the subordinate lodges and of the Endowment Rank self-acting, precisely as they were prior to the decision. Under the constitutions of the subordinate *lodges* the insured was entitled to notice that he had become in arrears before he could be suspended from the *lodge;* under the constitution of the *Endowment Rank* his insurance became void whenever his arrearges amounted to one year's dues. Kalinski received the only notice required to be given him—*i. e.*, a notice from the master of finance of his lodge, of his arrearages and under the terms of his contract a forfeiture of his endowment policy followed as a dry question of law, although he was never suspended by his subordinate lodge.

The constitution and laws of the order not having been changed by the decision, is the Supreme Lodge estopped by anything done in the Manikheim case from enforcing a forfeiture as against Kalinski? Manifestly not, "for the simple reason that no person can rely upon estoppel growing out of a transaction to which he was not a party nor a privy. There is no mutuality, which is a requisite of all estoppels."

Deery *vs.* Cray, 5 Wallace, 795.

Says the supreme court of Illinois in Mason's Benevolent Society *vs.* Baldwin, 86 Illinois, 479:

"A custom of sometimes waiving a forfeiture in cases of "non-payment of dues will not enlarge the rights of any "particular beneficiary or bind the society."

Another rule is that a party who relies upon the representations of another as estoppel, must show that he has acted upon them and has been induced thereby to change his position to his prejudice.

Concede, however, that Kalinski had read the decision in the Manikheim case, which is a fact not proven, would he have had the right to draw a conclusion from it that a forfeiture would not be claimed against him if he became in arrears to his lodge unless he was formally suspended? Quite the contrary, for he would have seen that special instructions had been issued providing for a more rigid enforcement of forfeiture for this cause. Would he have been justified in believing that *he* might violate the laws of the rank because *Manikheim's* fault had been condoned? Had he a legal right to remain in default for dues and rely upon the failure of the treasurer of his lodge to report him to the Endowment Ranks to save a forfeiture? Had he the right to believe that he would *not* be reported to his lodge after he had been notified that he was in arrears? Could he justly claim any benefit for himself growing out of the omission of the treasurer of his lodge to report him to the Endowment Rank, when he himself was not entitled to know whether such a report had been made or not? If he, in fact, at any time read the decision and circular letters and believed that they relieved him from the penalty of his default, this error was clearly the result of his own inability to understand their true meaning, for which this plaintiff is not responsible.

No estoppel being established against the insurer arising out of this decision, the defendant must justify its correctness as matter of law in order to support the charge of the court, or show in some way that the decision of the executive officers of the Supreme Lodge in one case is binding on the judiciary in another case in which the parties are different.

III.

It is clear that the condition in the contract upon which forfeiture is predicated is simple, and was intended to come into operation by its own force whenever the insured might be in arrears for one year's dues to his lodge. The forfeiture is made to follow the happening of that fact and is manifestly self-operative. The notice of this fact, which the circular letter of the supreme chancellor requires the master of finance of the subordinate lodge to give to the secretary of the Endowment Rank, does not create the forfeiture, but follows as a consequence of it merely for the information of the insurer.

The suspension of the member by his subordinate lodge is also a result of his default and not the cause of the forfeiture. Omission, therefore, of the master of finance of the subordinate lodge to give this notice, and of the lodge to suspend the member, does not suspend the forfeiture.

Rood *vs.* Railway Passengers, etc., 31 F. R., 62–64.

McMurray *vs.* Supreme Lodge, etc., 20 F. R., 107.

Brown &c. 129 N.Y. 87; 22 Mo. Sup. 127; 4 Dill. Cp. Ct. 216

It must follow from this that the decision in the Manikheim case is erroneous and cannot be set up as authority in this case.

It is not a proper interpretation of the contract, because it adds conditions not written into the original and assented to by the contracting parties.

It may be admitted, as a general principle, that the fraternity may make its own laws and interpret them, so far as relates to the internal administration of its affairs, and that these laws, so interpreted, will be enforced by the courts; but it is also a rule that the words of the constitution and by-laws of the society are considered written into the contract of insurance and form a part of it, especially where, as in this case, the insured stipulates to be bound by them.

Says Judge Hammond in Wiggins *vs.* Knights Pythias, 31 F. R., 122:

"Everybody will agree to this, that benevolent associations "or fraternities, no more than other parties to contracts, can- "not be allowed to construe the words they use in making "contracts otherwise than according to their plain and un- "ambiguous meaning. * * * Whether of the words of "the contract itself or of the rules and regulations which "become embodied in the contract, as part of it. They "cannot be permitted to interpret the contract as they please "and become their own judges of what they mean by the "use of words employed that have either a technical or "well-defined significance. Legislatures and parliaments "cannot do this."

And so, guided by these principles, the court held that the lodge could not declare a member to be in arrears for dues before the time fixed for payment by its by-laws had expired. The lodge, it was held, might change the by-laws and make dues payable as they saw fit, but could not change it by construction. If this is the law of the contract for one of the parties, it must be for the other.

There are other clauses in the contract, such as that the insurance shall become void in case the insured shall not continue in good standing in his lodge, which are not self-operative, but require some action of the lodge before forfeiture can take place. Thus all the authorities agree that where *suspension* is made the ground of forfeiture the fact must be shown by a production of a copy of the order from the minutes of the lodge, though Judge Wheeler, in the case of Lazensky *vs.* Supreme Lodge Knights of Pythias, 31 F. R., 492, holds that the order is not itself conclusive proof of the fact.

The rule that no one can construe his own contract so as to bind the other party to it of course does not forbid him to waive any legal right he may have in favor of the other;

but other persons have no claim upon him for a like generosity, even when they have the same kind of contract.

In other words, we are not obliged to be liberal to all, merely because we choose to give to one. There can be no estoppel in such matters.

In considering the effect of the decision, whether as a rule of construction or as estoppel *en pais*, it is a fact of controlling significance that Kalinski did not stipulate in the contract to be bound by the *decision* of the board of control, upon any matter involving its execution or construction, though he did agree to be governed by the *laws* of the order.

But it is held, by the highest authority, that associations of this character cannot by contract obligate their members to submit their rights to the exclusive jurisdiction of boards appointed by themselves, although it is admitted that a valid contract may be made to arbitrate a specific controversy after it arises.

Bauer *vs.* Sampson Lodge, 102 Indiana, 262.
Meritz *vs.* Armenia Insurance Co., 79 Pennsylvania St., 478.
Wood *vs.* Humphrey, 114 Massachusetts, 185.

In Scott *vs.* Avery, 5 House of Lords Cases, 811, the Lord Chancellor says:

"There is no doubt of the general principle that parties "cannot by contract oust the courts of their jurisdiction. "This has been decided in many cases."

The decisions of the Supreme Court of the United States are to the same effect.

Insurance Co. *vs.* Morse, 20 W., 445.
Barron *vs.* Burnside, 121 U. S., 186.

So in Bauer *vs.* Sampson Lodge, *supra*, the court held that a decision made by a tribunal of the order, which the

insured had agreed should be final, was no bar to a suit for the same cause of action in a court of that State.

Such decisions have been treated, and properly so, as mere rulings of executive officers in the course of their business, as auditors, in the particular case before them. As the insured is not bound by their rulings, the association cannot be, for mutuality is the very essence of estoppel.

In the light of these principles, what becomes of the decision in the Manikheim case, which bound neither of the contending parties, either as *res judicata* or by way of estoppel? Is it authority in this case, although of no effect in the one in which it was rendered beyond what the parties thereto voluntarily chose to give it?

The only aspect in which the decision may be entitled to any consideration is with reference to the construction of the contract.

But the difficulty here is that we are ignorant of the terms and conditions of the contract, as well as the particular facts which were under consideration in that case.

Manikheim died on the 11th of January, 1887, six months prior to the date of Kalinski's certificate; but the date of Manikheim's certificate is not shown, and we cannot say whether the conditions in both certificates were the same; but if it may be assumed that they were, we think that there is no necessity to resort to extraneous opinion to arrive at an understanding of the agreement. It is only when a contract is ambiguous and uncertain that the conduct of the parties and the manner in which they have executed it may be looked into in aid of construction.

Railroad Company *vs.* Trimble, 10 W., 367.

This general rule has been adopted by article 1945 of the Louisiana Revised Civil Code, which declares—

"That the intent of the parties is to be determined by "the words of the contract, when these are clear and ex- "plicit and lead to no absurd consequence."

"When the intent is evident and lawful, neither equity "nor usage can be resorted to in order to restrain or enlarge "that intent." (Article 1963.)

Here we have a plain contract containing the very simple condition that it shall terminate and become void whenever the insured shall become indebted to his lodge for one year's dues.

The court was not justified in adding the further conditions that the member must be suspended by his lodge and notice of that fact be sent to the insurer before a forfeiture will accrue.

Plaintiff in error therefore prays that the judgment of the circuit court be reversed and set aside and that a new trial may be awarded.

Respectfully submitted.

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CLERK.

SUPREME COURT OF THE UNITED STATES.

No. 268.

THE SUPREME LODGE KNIGHTS OF PYTHIAS OF THE WORLD, PLAINTIFF IN ERROR,

versus

MRS. EUGENIA KALINSKI, DEFENDANT IN ERROR.

MORRIS MARKS,
WILLIAM ARMSTRONG,
Attorneys for Defendant in Error.

SUPREME COURT OF THE UNITED STATES.

No. 268.

THE SUPREME LODGE KNIGHTS OF PYTHIAS OF THE WORLD, PLAINTIFF IN ERROR,

versus

MRS. EUGENIA KALINSKI, DEFENDANT IN ERROR.

STATEMENT.

The statement of plaintiff in error, as presented to the U. S. Circuit Court of Appeals, in our belief requiring additional details necessary for the more proper understanding by the Court of the issues in this cause, we respectfully submit the following statement: —

The Order of Knights of Pythias was incorporated about the year 1870—Act of Congress of May 5, 1870—16 Statutes, p. 96.

Its Declaration of Principles announces that, "Misfortune, Misery and Death being written in

"fearful characters on the broad face of creation,
"our noble order was instituted to uplift the fallen,
"to champion humanity, to be his guide and hope,
"his refuge, shelter and defense; to soften down
"the asperities of life, to subdue party spirit, and
"by the sweet and powerfal attractions of the glo-
"rious trinity of Friendship, Charity and Benevo-
"lence, to bind in one harmonious brotherhood men
"of all classes and all opinions."

The brightest jewels which it garners are the *tears of widows and orphans*, and its imperative commands are to visit the homes where lacerated hearts are bleeding, to assuage the suffering of a brother, bury the dead * * * *care for the widow and educate the orphan*, to extend charity towards offenders, to construe words and deeds in their least unfavorable light, granting honesty of purpose and good intentions to others, and to protect the *Principles of Knighthood* unto death.

Its operations were and are conducted through the medium of three grades of government:

1st. The Supreme Lodge, holding supreme and universal jurisdiction and which is recognized as the supreme and paramount authority.

2nd. Grand Lodges exercising jurisdiction within the territorial limits of various States of the Union; and,

3rd. Subordinate Lodges in various cities, towns and settlements, being associations of individuals banded under a common name.

Grand Lodges are formed and composed of representatives or delegates from Subordinate Lodges, while the Supreme Lodge in turn is composed of representatives or delegates from various Grand Lodges.

Such was the original plan and Constitution of the order as existing at its incorporation in 1870.

Subsequently, with the view of increasing its efficiency and power for well doing and carrying out its objects as contained in its Constitution and laws and as partially set forth hereinabove in its Declaration of Principles, it added two additional features.

The Uniform Rank—military in its nature, designed to attract the youth and soldierly inclined.

The Endowment Rank—designed to be in the nature of insurance, to furnish a fund to support the widow, orphan or loved one, upon the death of a brother member. The bodies through which these objects were sought to be attained, in the Uniform Rank, were known as Divisions, Regiments and Brigades; in the Endowment Rank were called Sections.

Their honors, benefits and privileges were in-

tended to be and were confined to Knights of Pythias who were members of the various Subordinate Lodges.

Achille Kalinski was a member of Syracuse Lodge No. 50 (a Subordinate Lodge) when he was admitted to membership in Section 363 of the Endowment Rank.

At the date of his death, on May 26, 1891, he was a member of Syracuse Lodge No. 50, being recognized as such and the Lodge called out to attend his funeral, as per the following notice in public print: "New Orleans, May 26th, 1891.—To the Officers "and Members of Syracuse Lodge No. 50, K. of "P.: You are hereby notified to meet at the Lodge "Room, on Wednesday evening, May 27, at 3 p. "m., to attend the funeral of our late brother, Capt. "A. Kalinski. By order of H. M. Marks, C. C.

J. A. H. DeLeon, K. of R. and S.

At the date of his death his assessments in the Endowment Section were duly paid up and his name carried on the rolls or list of said Endowment Section 363 as a member thereof.

His assessments upon the Endowment Policy of Insurance were accepted and taken from him by the Order, through its officers and agents, for some time after the date at which it is alleged by plaintiff in error that he became in arrears to his Subor-

dinate Lodge, as charged, and *not upon one but upon several occasions thereafter.* The funds of the Endowment Rank are made up entirely of the monthly assessments levied solely upon the individual *members of the Endowment Rank,* and derive no support from and have no connection with the Subordinate Lodge funds or any other species of funds in the Order.

ARGUMENT.

Plaintiff in error, despite the verdicts of two juries and a unanimous opinion of the U. S. Circuit Court of Appeals, seizes upon and complains of an instruction of the learned judge of the U. S. Circuit Court, as its last hope of defeating the claims of a destitute widow and children of a deceased brother, unto whom it has professed itself to be bound by the grandest and most beautiful feelings and sentiments that can enthrall the heart of man, after agreeing with him to pay unto his widow and orphans a fund to shield and protect them when he had gone and was powerless to care for them; from 1887 to 1893—they take his money even unto his death bed.

Secure in the Declaration of Principles of the Order of Knights of Pythias, "*that the brightest jewels which it garners are the tears of widows and*

orphans" * * * "*to care for the widow and educate the orphans*"—confident in the faith and belief, induced by the order in repeatedly calling upon him for his assessments and taking the amounts thereof from him *after the date* at which the alleged forfeiture as wrongfully set up by them was incurred, and mingling same in its general insurance fund and using this fund and his money to pay out unto other beneficiaries, he has done all that man could do for loved ones—he dies unwarned and without an opportunity to protect himself or his wife or children, or to provide for them other means of support or insurance.

Some of its representatives would thus have a brother for whom it professed "Friendship, Charity and Benevolence," to die, betrayed and deceived, and would put the order in the attitude of waiting for his death, to urge against his widow and children a provision not stated or set forth in the Endowment Policy, but alluded to vaguely and indefinitely under this heading.

"That I *will* be governed by *all the laws, rules and regulations* of the order governing this rank, now in force, or that may hereafter be enacted, or submit to the penalties therein contained."

A provision that is as a particle of star dust in the milky way of the skies, that would take the en-

lightened thought of the astronomical student aided by the instruments of science to discern and understand a particle of star dust that is invisible and lost to the ordinary wayfarer upon earth.

A provision that is only known, much less understood by the student and most learned and advanced in Pythianism.

A provision that the busy toiler and humble workingman that constitutes three-fourths of the Knights of Pythias never have known or read, much less digest or understand.

Kalinski, the present defendant, being Captain of a fire patrol, on duty day and night striving to earn a living for himself and family, had but little opportunity to be with them, much less attend his Subordinate Lodge, and still less to become learned in all the edicts and decrees of what has grown to be a mass of legislation designed to govern and apply to an ever increasing army, now numbering over 400,000 men.

A soldier in the ranks, he had a right to believe as his superior officers led him to believe; that all which was incumbent upon him had been performed.

He understood, believed and acted upon the belief that was *fostered and maintained, if not supplied* by the repeated actions and steady course of

the Supreme Lodge, its Board of Control and Endowment Section 363, through its proper officers and agents, in calling upon and collecting from him various assessments as a *participant in endowment or insurance benefits* and upon the ground and by reason of his being a member of the Endowment Rank.

II.

For membership in the Endowment Rank, there exists only two essential elements of the contract.

1st. Membership in the Subordinate Lodge.

2nd. Payments of Endowment Assessments.

All other rules, regulations and edicts revolve around these two centres, and are but incidental thereto; as to these non-essential and accidental or incidental regulations, it was certainly within the power of the Supreme Lodge or Board of Control through its proper officers and agents, to waive compliance with the same, even had the fault of non-compliance rested solely at Kalinski's door.

Yet more was it within their province to waive forfeiture when non-compliance was the result of their own actions and representations.

As to the essence of the contract or the essential elements thereof. To-wit: Subordinate Lodge Membership and contributions to the Insurance Fund or Payments of Assessments.

Kalinski died a recognized member of the Syracuse Lodge, which was ordered out to attend his funeral as their brother; and all endowment assessments due by him were fully paid up by him at his death.

III.

Plaintiff urges first an escape from waiver of alleged forfeiture by reason of its ignorance in receipt of assessments.

The present case is not one between two separate and distinct principals, involving separate and distinct interests; on the contrary, Kalinski, the Board of Control of the Endowment Rank, the Supreme Lodge, the Section Secretary, and the Subordinate Lodge Officers should have no differing and adverse interest; neither of them are, or competent to be, an Insurance Company; each are part and parcel of one whole, mutually interested *in a trust fund* administered by officers and agents who are and should be *the trusted agent* of Kalinski as well as of any and all Knights of Pythias, contributing thereto and creating and maintaining same.

In their conduct of the affairs of this trust fund, they are his agents, and he had a right to rely upon them and presume that they had thorough knowledge of their duties and were acting in accord therewith, and that their acts, deeds and demands upon

him in the shape of collecting monies from him to help support and maintain *this mutual trust fund*, was in pursuance of a knowledge of their own duties, his relations to them, and contained a faithful adherence thereto.

In whom may the possession of the knowledge and as a matter of fact did the knowledge properly rest, whether you impute the same as a principle of law, or as a matter of fact, but in some, if not all of the officers and agents upon whom devolved duties in connection with this trust fund.

Why should Kalinski periodically pay and the same be periodically received, various endowment assessments, if it was not mutual intention and a natural consequence that at his death his beneficiaries should be aided from the fund thus created.

The cases cited by plaintiff in error upon this point are to be differentiated from the case at bar in two important respects.

1st. The question of waiver of forfeiture was being applied to acts of omission or commission with respect to material or essential elements of the contract of insurance, and acts, the existence or non existence of which regulated and influenced the insurance company to enter into the contract, and in the absence or presence of which they never would have entered into the contract.

Here the alleged act of omission or commission was not of the essence of the contract, the consideration of same being: 1st, Subordinate Lodge Membership and, 2nd, Payment of Assessments.

2nd. The non-waiver of forfeiture was set up by one principal against another because of the alleged want of authority of an agent in said agent's condonation. Here there can be no question as to the authority of the agent or agents, and besides, the agent or agents are agents and co-associates with with Kalinski.

IV.

Plaintiff in error contends that the Manikheim case is *res inter alios acta*—no mutuality of interest nor privity of parties, etc., and cites Mason's Benevolent Society vs. Baldwin, 86 Illinois, 479. "A custom of sometimes waiving a forfeiture in cases of non-payment of dues, will not enlarge the rights of any particular beneficiary, or bind the society."

This case is upon a far different state of facts from the present, and if it were not, would be readily disposed of by the following rule:

The customary dealing by a company with its policy holders may be shown to prove a waiver of its rights to enforce forfeiture on failure to pay premiums at the time they became due by the terms of its policy.

Buckbee vs. Ins. Co., 18 Barbour, 541.
Ruse vs. Ins. Co., 26 Barbour, 566.
1 Dig. Ins. Rep. 406, 467, 685.
Froelich vs. Ins. Co., 47 Mo. 406.
Mayer vs. Ins. Co., 38 Iowa, 304.
Home Ins. Co. vs. Pierce, 75 Ill. 426.

The learned counsel for plaintiff in error would have this tribunal disregard all constitutional provisions, laws, rules and regulations of the Supreme Lodge, subordinate Lodge, and even those of the Board of Control of the Endowment Rank. They claim that the only one that is binding is the one which forfeits his right in the Endowment Rank, and according to their construction it is self-operative. They say the moment he becomes in arrears to his Lodge for twelve months dues the forfeiture is complete; nothing more is required. If that be correct, the Lodge could continue to keep the delinquent members, the Secretary of the Endowment Section continue to receive the monthly assessments from time to time, until the members die, and then when the time came for the fulfillment of their obligation they find that he was in arrears to his Lodge, calmly say to the widow and orphan of the deceased brother, we owe you nothing, your husband and father has forfeited his rights. Was such a state of affairs ever contemplated?

Certainly not; and it was left to the present members of the Board of Control to attempt to invoke such a monstrous doctrine, one that would destroy the object of the Order so beautifully enunciated in the Declaration of Principles, but to the credit of the Order be it said that when a case arose, and here we refer to the case of John A. Manikheim, Exhibit D, Record p. 23, involving the same question as in the case at bar, they with a unanimous opinion decided in favor of the beneficiaries and against the Secretary, who tried to invoke this same monstrous doctrine, now sought for in this case. The reasons assigned by them for their judgment are complete, and should have prevented the question from ever coming up in the Order again, but with a wisdom that is worthy of comment the Supreme Lodge did not stop there, fearing that at some future day the Board of Control may be composed of men who would forget the tenets of the Order and worship at the shrine of Gold, issued orders to the Grand Chancellors, Secretaries and to the Endowment Ranks, (as found in Record, pages 24, 25, 26), which when complied with would prevent a reccurrence of the Manikheim or Kalinski cases, all of which orders it is admitted were not complied with in this case, for had they been and had Kalinski been suspended

from his Lodge, or had the Secretary of the Section refused to take his monthly assessments and dropped him as a member, he could have returned as provided for in Art. 3, Sec. 3 of the Constitution of the Endowment Rank, and Art. , Sec. of Syracuse Lodge, of which Kalinski was a member.

We now come to the question of estoppel, so ingeniously set out in the brief of plaintiff in error, and in answer thereto and the numerous authorities cited, we would respectfully urge that they do not apply to the case at the bar. We are not claiming any estoppel by reason solely of the Manikheim case, but we also claim that if it be true, that at a certain period of time fixed by the law governing the contract we forfeited the same by not paying, and that it was their duty to know when that occurred (being the keeper of the records), they continue to receive our monthly assessments month after month, they are presumed to have waived their right of forfeiture and are estopped from from setting it up afterwards on the flimsy pretext of having received it through error. Whose error was it; Kalinski's or their own? Were they misled by any false statement of Kalinski's? Had they complied with the law and regulations as laid down for their guidance, this

error would not have occurred, and are we to suffer for their gross violation of the laws, and they be permitted to keep from the widows and orphans of Kalinski the money that rightfully belongs to them? Kalinski contributed for years to this fund, which is separate and distinct from the money of the Lodge, where it is claimed he was in arrears? His beneficiaries claim nothing from the Lodge, but they have a just and righteous claim to be paid out of the funds of the Endowment Section, and by all laws human and Divine that are just and equitable they should have it.

We also respectfully call your Honors' attention to the fact that the highest authority in the Order, when the first case presented itself for adjudication, has placed a construction upon the clause enacted by themselves under which the forfeiture of the Endowment policy is sought, which decision is based upon justice and equity, and which as far as the Order is concerned is binding upon all its members, and as published in their proceedings in Vol. 5, p. 4097, at their session of 1887 and 1888, which has never been repealed by them, and the Circuit Judge in charging the jury, adopted that as good and sound law, and therefore held that it had a right to govern in a case where the same state of facts were shown to exist. The Court simply con-

firmed the decision rendered by their own tribunal, and under the Writ of Error sued out to the Circuit Court of Appeals, the same was affirmed by said Court as being correct. And it is now sought for the sole purpose of delay by the said Board of Control, to have this Honorable Court pass upon this simple proposition as to whether or not the Board of Control, who decided the Manikheim case, were right or wrong. This Board of Control, with an attorney, all being salaried officers, seeking distinction at the sacrifice of every principle that should govern the Order, who had honored them with their confidence, have thus far prevented the unfortunate widow and orphan of their deceased brother for two years from collecting the money justly due them, and now seek refuge here in this high tribunal by the Writ of Error granted them to keep the defendant in Writ, and plaintiff in Cause, from executing the decree of the Circuit Court and confirmed by the Court of Appeals.

In conclusion, we believe that we could submit no more complete additional or better argument in behalf of Defendant in Error than that contained in the following able opinion of the organ of the Court, Judge Locke, in rendering the unanimous judgment of the U. S. Circuit Court of Appeals.

* * * * * ~~See pages 5 to 24 to dismiss.~~ * * * * *

Opinion Circuit Court of Appeals.—Judge Locke as the organ of the Court.

United States Circuit Court of Appeals, Fifth District, November term, 1892.—The Supreme Lodge, Knights of Pythias of the World, Plaintiff in Error, vs. Mrs. Eugenia Kalinski, Defendant in Error.—No. 123.—Error in the United States Circuit Court, Eastern District of Louisiana.—Before Pardee and McCormick, Circuit Judges, and Locke, District Judge.— This was a suit brought in the Circuit Court by Eugenia Kalinski, as beneficiary of Achille Kalinski, against the Supreme Lodge, Knights of Pythias, upon a certificate of membership of the Endowment Rank of the Order of Knights of Pythias, certifying that he had received the rank of the order, and in consideration of certain payments and the performance of certain conditions his wife, the beneficiary, would be paid upon his death $3000. In answer defendant below, plaintiff in error, here, set up that one of the conditions of Achille Kalinski's application was that he should keep his lodge dues fully paid, and with that condition he had not complied. That one of the rules of the Endowment Rank was that if "any member of the Endowment Rank becomes in arrears to his lodge for an amount equal to one year's dues, he shall forfeit his membership in the section and said

rank and render void his endowment certificate," that Kalinski, the deceased, at the time of his death, although he had paid the assessments to the Endowment Rank in full, was in arrears to the Syracuse Lodge, of which he was a member, for more than a year's dues, and that he had forfeited his membership, and the certificate was null and void. A trial being had and a verdict found for plaintiff for the full amount claimed, a new trial was granted, which also resulting in a verdict for the plaintiff, a writ of error was sued out in which was assigned as error the refusal of the Court to give the charges asked and giving the charge as it was given. These alleged errors and the facts proven in the case are fully set out in the bill of exceptions, which is:

"Be it remembered that at the trial of this cause before the jury on the 11th of February, 1893, the defendant in support of its answer and plea, offered in evidence: First, the application of Achille Kalinski for membership in Section 363 of the Endowment Rank of the Order of the Knights of Pythias, hereto annexed and marked exhibit A as part of this bill; second, the constitution of the Endowment Rank of Knights of Pythias of the World, including the revised general laws and regulations adopted by the Board of Control Oct. 24, 1890, marked exhibit B1 and exhibit B2; made part of this bill;

third, also the constitution and by-laws of Syracuse Lodge No. 50, Knights of Pythias, located at New Orleans, La., marked exhibit C, and made part hereof; that all of the said documents were received in evidence without objection, and were accepted by the Court as determinative of the rights of the parties in the cause of action herein. And it further appearing to the Court from the books of account kept by the said Syracuse Lodge No. 50 and other evidence, that the said Achille Kalinski was indebted to said lodge, of which he was a member, on the 31st day of March, 1891, and at the date of his death, May 24, 1891, in the sum of $12.50 for dues owing by him to his said lodge, under by-laws, Article 4, page 46, and Article 13, page 54, of said lodge, which sum was in excess of one year's dues he was required to pay, as dues; but that he had not been suspended by his lodge for that reason before his death under the provisions of Section 5 of Article 16 of the constitution of the lodge, and Section 3 of Article 14 of the by-laws, although he had received notice from the proper officer of the lodge to pay the same, and had been told to pay the same before the next lodge meeting, but that he died before such next meeting without having paid the same. And it further appearing as a fact, not disputed, that the Keeper of Record and Seals of Syracuse Lodge No.

50 had under Section 6, Article 4, of the constitution of the lodge failed to notify the section of the Endowment Rank to which Kalinski belonged, that he was in arrears; and that the said Syracuse Lodge failed to suspend him on account of arrears, and that the assessments due by Kalinski to the Endowment Rank were received in ignorance of the fact that he was so in arrears and had been tendered back after his death and after several months, subsequent to the application of his widow for payment of policy. And plaintiff having offered the certificate of membership issued to Kalinski upon acceptance of his application, marked exhibit E, which was accepted without objection, both parties rested upon the evidence; and counsel for defendant thereupon requested the Court to charge the jury as follows:

The jury is instructed that the books of account kept by the Syracuse Lodge, of which the deceased, Achille Kalinski, was a member, are competent to be considered by them as evidence with reference to his indebtedness at the date of his death, for lodge dues, and that if the jury find, from these books of account, that he was in arrears, in the absence of proof which opposes or of proof showing payment of these dues, or error in the account, the entries in said accounts are conclusive proof

of the amount shown thereby to be due. Which charge the Court gave as requested; adding thereto the following: I charge the jury as requested by the defendant's counsel as to the proof of the arrearages due by Mr. Kalinski at the time of his death. The books of defendant are competent proof, and they are uncontradicted, and, therefore, establish the arrearages as being $12.40.

And defendant further requested the Court to charge the jury as follows:

"If you find that Kalinski was in arrears and indebted to his lodge for dues at the date of his death, in an amount equal to one year's dues, you must find as a conclusion from the fact that he had forfeited his membership in the Endowment Rank, and that the plaintiff is not entitled to recover in this suit."

And the receipt of assessments by the officers of said Endowment Rank (which it is admitted have been tendered back as herein above set forth) previous hereto, if in ignorance of the fact that he was so in arrears, was not a waiver of such forfeiture. But the Court refused to give the charge as requested, but in lieu thereof charged the jury as follows:

"As to the construction of the meaning as a matter of law of the fundamental law and of the orders

of defendant's organization, I adopt the views of the board of control of defendant's order, in case of John A. Manikheim, and I instruct the jury, if the jury finds as a fact that the keeper of records and seal of the order to which Mr. Kalinski belonged, failed to notify the section of which he was a member, of the fact that he was in arrears for dues to said lodge, and also that the lodge failed to suspend Mr. Kalinski in accordance with the law; and also the section of the Endowment Rank had received the monthly assessments of said Kalinski up to the date of his death, then the verdict will be for the plaintiff and against the defendant for the sum of $3000, with interest from judicial demand."

The views of the board of control, referred to in said charge, as well as the instructions of the Supreme Chancellor to the various Grand Chancellors and officers and members of the various sections of the Endowment Rank, is hereto annexed and marked exhibit D, and made part of this bill, which refusal of the Court to give the instructions requested and giving the foregoing instructions in lieu thereof is alleged as error.

Locke, District Judge, delivered the opinion of the Court.

Under the assignment of error, the only questions for us to consider are, first, whether refusing

to charge in effect, that the forfeiture of the membership of Kalinski depended solely upon the fact of his being in arrears to his lodge to the amount of a year's dues was an error; or, secondly, whether charging that the fact that the keeper of records and seal of the order to which Mr. Kalinski belonged failed to notify the section of which he was a member, of the fact that he was in arrears for dues to said lodge, and that the lodge failed to suspend him in accordance with law; and that the Endowment Rank had received the monthly assessment up to the time of his death would bar the forfeiture of his membership, was error.

The section of the Endowment Rank of the Order is a separate and distinct body from the lodge, and for insurance purposes only. The dues and assessments of each are kept distinct, and the non-payment of one does not affect the assessment of the other. But it is provided that no one can become a member of a section unless he is a member of a lodge.

There is no question as to the sufficiency and integrity of the original certificate of membership, but it is claimed by plaintiff in error that under the agreement of the insured, as found in the application and under the rules of the order he was in arrears to his lodge for an amount equal to one year's

dues, and had forfeited his membership in the section and rank, and rendered void his endowment certificate.

The penalty of a forfeiture of rights under a contract of indemnity or insurance is not found in law, and it is only in positive, direct and unavoidable terms in the agreement that it will be enforced, and especially so in such a case as this, where payment or non-payment of the amount unpaid was a non-essential to the contract of insurance, where it neither increased nor diminished the fund from which the payment of death losses was derived, or increased or diminished the risks to which the insured was exposed.

A careful examination of the application of Kalinski for membership shows that the only thing found therein which can be invoked to forfeit his membership is found in the paragraph: "I hereby agree that I will punctually pay all dues and assessments for which I may become liable, and that I will be governed and this contract shall be controlled by all the laws, rules and regulations of the Order governing this Rank now in force, or that may hereafter be enacted or submitted to the penalty therein contained." There is no penalty of forfeiture declared in this language, and although he promised to pay all dues, unless there is such

penalties attached to non-payment by some other rule or regulation, it cannot be held to ensue. It is claimed that such a rule was found in what was at that time article 10, section 1, and what has since become article 8, section 1; of the code of by-laws, rules and regulations of the Order adopted by the board of control of the Supreme Lodge of the Order, which is: "When a member of the Endowment Rank becomes in arrears to his lodge for an amount equal to one year's dues he shall forfeit his membership to the section and said Rank and render void his Endowment certificate." Upon the binding force of this rule the question in this case depends. The deceased had bound himself to be governed and stipulated that the contract should be controlled by all the laws, rules and regulations of the Order, and by this measure alone can the rights of his beneficiary be determined.

An examination of the constitution of the Order, which must be accepted of fundamental, organic and controlling law, provides for the manner of the forfeiture of the rights of members, and in article 11, section 1, declares that if one resign "such resignation shall cause a forfeiture of all amounts paid into and all claims upon the Endowment Rank."

Section 2 provides that "Whenever a member of the Endowment Rank withdraws from his lodge or,

whenever his membership therein ceases from any cause other than death, he thereby severs his connection with this Rank and forfeits all his right, title and interest in and to the Endowment fund."

And section 3 provides for an appeal in case of a suspension of a member to the Grand or Supreme Lodge.

This would certainly seem to provide for the manner in which and by which a member should be held to forfeit his rights of membership and raise the very serious question whether any rule by which this manner was changed which declared any other manner of forfeiting such membership did not infringe upon the constitutional rights of the members and was therefore null and void. The well established principle of law of *expressio unius exclusio alterius est* would seem to apply, and the providing one way of determining forfeiture would preclude any other and more stringent. But we do not find that we are compelled to decide such question, as we consider it has already been done by the order itself.

The Constitution further provides in the organization of the order for a board of control, and states very fully its duties and powers. Article 7, Section 5, provides that "The board shall have entire charge and full control of the Endowment Rank, subject

to such restrictions as the Supreme Lodge may from time to time provide. They shall hear and determine all appeals, and their findings shall be final unless reversed by the Supreme Lodge in session." Section 9—"The board is hereby authorized to enact general laws, rules and regulations in conformity with this constitution for the sections and the membership of the Endowment Rank, and alter and amend such general laws, rules and regulations when, in their judgment, the needs of the ranks require such action."

In accordance with such provisions, the board of control adopted general laws, rules and regulations, and provided in Article 3, Section 5, of the same, that the secretary of each section shall keep a financial account with each member and in January furnish to the master of finance of the several lodges a list of the names and request such officer to inform him whenever any member of the lodge became in arrears to the lodge of an amount equal to a year's dues; they also provided, as quoted in Article 8, Section 1, that when a member becomes in arrears to his lodge he shall forfeit his membership in the section.

It was by this board and under the powers thus given, that the laws, rules and regulations, by one of which it is claimed the forfeiture took effect in this

case, were enacted. But it will been seen that their authority to establish rules was limited to those which should be "in conformity to this constitution." Otherwise they had full control of the Endowment Rank; not only to make laws, but to hear appeals. They not only constituted the chief legislative body, but also the Supreme Court of the Order, whose finding were to be final, unless reversed by the Supreme Lodge in session.

This was the organization and these the established laws of the Order. The constitution had provided that when a member withdrew from his lodge or his membership therein ceased from any cause other than death, he forfeited his rights, title and interest to the Endowment Fund. The board of control declared that if he was one year in arrears for dues the forfeiture took place; whether this rule was or was not in conformity to the constitution, and how far it was binding, was directly submitted to the board of control, sitting as a judicial body, and passed upon.

The constitution and by-laws of Syracuse Lodge, of which the deceased was a member, provides, Article 16, Section 5, that "a member, who is in arrears to the amount of one year's dues and has been notified to pay the same, shall be declared suspended by the C. C. in open lodge, and a record of

such suspension shall be entered in the minutes of the Lodge."

It also provides, Article 4, Section 6, that the "master of finance of each lodge shall furnish to the secretary and treasurer of any section of the Endowment Rank to which his lodge is tributary, such information concerning the standing of members as he may from time to time require."

The case therein presented was the exact case in point of fact, as shown by the evidence, as the case at bar, the Keeper of Records and Seal of the lodge of which Kalinski was a member, had failed to notify the section of which he was a member of the fact that he was in arrears for dues, and said lodge had failed to suspend him, but the section of the Endowment Rank had received the monthly assessments up to the time of his death.

There can be but one conclusion drawn from this decision. The board of control had been, by the case presented by the Supreme Secretary, brought face to face with their rule providing that simply the being in arrears for a year should forfeit membership, as viewed in the light of and compared with the eleventh article of the constitution and the question fairly presented, whether such a forfeiture of rights in a manner not provided for in the constitution, was in conformity to it. Their decision

was a construction placed upon Article 8 of the laws, which made it in conformity with the constitution and became of equally as binding effect as the previous rule.

In addition to the copies of such constitutions, regulations and by-laws, we find in the record and made a part of the bill of exceptions by special declaration, a finding and decision of the board of control, as found in the volume 5 of the Journal of the Supreme Lodge of the Knights of Pythias, for the years 1887-8, page 4097, in a case presented to that board by the Supreme Secretary.

It is contended by the plaintiffs in error that this exhibit was not offered or received in evidence and is not therefore a fact to be considered, and can have no bearing or weight in this case.

We cannot accept these views of this exhibit. It is brought directly into this Court by the plaintiffs in error; its validity is not questioned nor that it was presented and considered by the Court below, and if the substance or matter contained is relevant we consider it too late to object to the manner in which it was presented for consideration.

When we examine the matter of this exhibit we find that it is a decision and ruling of the board of control, to whom the constitution of this Order had given entire charge and control of this Endowment

Rank, under which the certificate had been given; and who had power to make, and who had made, all laws, rules and regulations and in whom was the power to alter and amend such rules and regulations when in their judgment the needs of the Rank required action. Not only was it a decision and ruling of theirs upon a subject of which they had full jurisdiction, but one in which their word became law. The facts also presented by the Supreme Secretary made it a case in which any ruling established became directly relevant in the question herein pending. The question submitted to the board of control, as shown by the record of the journal of the Supreme Lodge, was:

"Brother John A. Manikheim, a member of Section No. 63, Endowment Rank, of Washington, D. C., died on the 11th day of January, 1887. At the time of his death he was in arrears to his lodge for one year's dues, but had paid all of his assessments to his section of the Endowment Rank."

The decision was:

"The board of control, after a very careful consideration of the facts in this case, decided, in view of the fact that the Keeper of Records and Seal of the lodge to which the late John A. Manikheim belonged, had failed to notify the section of which he was a member of the fact that said Brother Manik-

heim was in arrears for dues to said lodge, and that said lodge had failed to suspend said Manikheim in accordance with the law, and that said section of the Endowment Rank had received the monthly assessments of said Manikheim up to the date of his death, the Endowment Rank is liable for the full amount of the endowments, and the Supreme Secretary is instructed to pay the beneficiaries the amount due."

This was so considered by the Supreme Chancellor of the Order is plainly seen in the immediate issue of the instructions contained in the same exhibit, calling to the attention of the officers and members of the sections, the importance and necessity of immediately forwarding information of arrears and dues.

It is true that subsequent to this decision, in the general laws and regulations adopted by the board of control, October, 1890, the provisions of the Article 10, Section 1, were continued in Article 8, Section—, only changing the term of arrears necessary to entail a forfeiture from six months to a year, but this in no way do we consider added to its force. The board of control had already construed the law of Article 10, Section 1, and in effect declared it not in conflict with the provisions of the Constitution and a re-enactment of the same with

such immaterial change could not do away with the force of the rule of construction given.

We can, in no degree, accept the position urged by the plaintiff in error that this decision was *res inter alios acta* and of no weight or relevancy in the case.

This case is to be determined by the rules and regulations of the Order. The Order had in its organization established a board to whom was given an almost unlimited power to establish rules and regulations which should control the relations, rights and duties of the hundreds of thousands of individual members with the great Order and to change and amend them as deemed best, and to hold that such a finding as this was simply to determine an individual case "out of consideration for the beneficiary" and might be changed in the next case from personal motives, would show a lack of appreciation of the principles, aims and objects of the Order, and the good faith of its board, to which we consider it justly entitled.

We consider that the decision in the Manikheim case was not only *res inter alios acta*, but was a rule established by the same power and entitled to the same respect as the original Article 6, Section 1, and pronounced after more careful consideration than that was enacted:

The question then turns upon whether Kalinski was at his death a member of his lodge, notwithstanding his being more than one year's dues in arrears.

The constitution and by-laws of Syracuse Lodge, of which the deceased was a member, provides, Article 16, Section 5, that "a member who is in arrears to the amount of one year's dues, and has been notified to pay the same, shall be suspended by the Chancellor Commander in open lodge, and a record of the same kept in the minutes."

As well might be claimed that the decisions of any supreme judicial tribunal, whether State or national, establishing a rule of property or of individual rights, was *res inter alios acta*, and could not be relied upon as of any binding force by those who had subsequently acquired property or claimed rights under identically the same circumstances.

In this case even more weight should be given to such decisions, for here the board was not only judicial, but was also legislative. It could not only say what the law was, but what it should be.

Until suspended in open lodge, in accordance with Section —, we find no law that would forfeit the membership of Kalinski, although he had been notified of his being in arrears.

But another view of this case may well be considered.

In the case of Insurance Company vs. Eggleston, 96 U. S. 572, Justice Bradley, in speaking for the Court, says:

"Any agreement, declaration or course of action on the part of an insurance company which leads a party insured honestly to believe that by conforming thereto a forfeiture of his policy will not be incurred, followed by due conformity on his part, will and ought to stop the company from insisting upon the forfeiture, though it might be claimed under the express letter of the contract."

Here the Order, the insurance company, in the most public and authoritative manner, had published a portion of the journal of its Supreme Lodge the solemn judgment and decree of its highest legislative and judicial body, declaring that a member from whom the monthly assessments had been received, and who had not been suspended at the time of his death, although a year's dues in arrears, had not forfeited his membership, but his beneficiary was entitled to his benefit. This publication was made nearly four years before the death of Kalinski, and the suggestion that he may not have known of it cannot for a moment be accepted.

What declaration by an insurance company could be more entitled to respect and confidence, and if misleading, more liable to mislead? Such a pub-

lished declaration made by a private, or joint stock insurance company, would unquestionably prevent the forfeiture of any policy coming within the terms of its provisions. How much more should it have such effect within the limits of an Order like this, where it is presumed that such published declarations are for the information and guidance of those whose mutuality of interest is one of the principles of its organization. Considering the decision in the Manikheim case in either way as the establishment of a new rule, or as the publication of the decision of the board of control, we consider the plaintiff as estopped from pleading a forfeiture and we find no error in the Court below, and the judgment is affirmed with costs."

We also believe that as defendant in error, an unfortunate, destitute widow, with helpless orphans, has been bitterly fought and strenuously denied her just rights and deprived of the use and advantage that would have been derived from the previous receipt of the amount herein due her and forced to hard and unremitting toil to earn a pittance to avert starvation to herself and little ones for a period of over four years since the institution of the suit (April 25th, 1892,) despite the verdicts of two juries in one court (the U. S. Circuit Court) and the unanimous decision of the three judges of

another Court (the U. S. Circuit Court of Appeals) upon the frivolous technical grounds advanced herein by plaintiff in error, that the present case is one which, in addition to the affirmance of the judgment in favor of defendant in error, abundantly merits the award of twenty per centum damages for a frivolous appeal.

Respectfully submitted,

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